

**NOMINATION OF MR. EMIL FRANKEL TO BE  
ASSISTANT SECRETARY FOR TRANSPORTATION  
POLICY AND MR. JEFFREY SHANE TO BE  
ASSOCIATE DEPUTY SECRETARY OF  
TRANSPORTATION AT THE  
DEPARTMENT OF TRANSPORTATION**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED SEVENTH CONGRESS**

**FIRST SESSION**

**DECEMBER 6, 2001**

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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**NOMINATION OF MR. EMIL FRANKEL  
TO BE ASSISTANT SECRETARY FOR  
TRANSPORTATION POLICY AND  
MR. JEFFREY SHANE TO BE ASSOCIATE  
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AT THE DEPARTMENT OF TRANSPORTATION**

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**THURSDAY, DECEMBER 6, 2001**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:35 p.m. in room SR-253, Russell Senate Office Building, Hon. John B. Breaux presiding.

**OPENING STATEMENT OF HON. JOHN B. BREAUX,  
U.S. SENATOR FROM LOUISIANA**

Senator BREAUX. The Committee will please come to order. Good afternoon. We are in the Full Committee, this afternoon on the confirmation of two nominees submitted by the administration, Mr. Jeffrey Shane to be Associate Deputy Secretary, Mr. Emil Frankel to be Assistant Secretary of Transportation Policy at the Department of Transportation.

We are delighted to have some of our colleagues here to introduce our nominees and we will get right to their remarks and let them be excused after they make their comments. Of course, our good friend Senator Dodd is here, and Chris, we welcome your introductory comments.

[The prepared statement of Senator Breaux Follows:]

**PREPARED STATEMENT OF HON. JOHN BREAUX, U.S. SENATOR FROM LOUISIANA**

I am pleased to welcome Mr. Jeffrey Shane and Mr. Emil Frankel to the Committee today.

The two candidates before us present good credentials in transportation, law, education and politics. As veteran of the Department of Transportation, Mr. Shane's knowledge and background will serve him well as he moves through the confirmation process and into his new role as Associate Deputy Secretary. As a former Commissioner at the Connecticut Department of Transportation, Mr. Frankel is up to the task of Assistant Secretary for Transportation Policy, but we don't want to downplay the host of challenges awaiting both nominees at the Department of Transportation. I would like to highlight a few of my concerns.

**SECURITY**

After the passage of the Aviation Security Act, there is a lot of work ahead for the FAA and the Department of Transportation to establish improved federal security systems at airports, oversee airplane retrofits, and coordinate relevant criminal

data bases. While much attention has been correctly focused on aviation, I would like to make sure that security efforts are addressed in a comprehensive fashion. My subcommittee has held hearings on maritime, rail, and hazardous materials security concerns. All of these modes face serious security challenges and they have not received adequate attention and support from the federal government. We should not wait until a catastrophe happens to provide the necessary focus to our nation's transportation systems—there is a clear need to do so now.

#### COMPETITION

We have watched for many years as the airline, railroad and virtually every other industry has continued to consolidate—the transportation sector is not unique in this respect. However, while I am a true supporter of competition, we will not have a competitive environment if we are left with only one or two carriers and the government regulates every movement or transaction.

#### MARITIME

There are few organizations in the federal bureaucracy that are more liked and better respected than the Coast Guard. Each year we add to the Coast Guard's diverse missions in law enforcement, search and rescue, drug interdiction, port security, and marine environmental protection. Each year the men and women of the Coast Guard rise to the new challenges we offer them—and this year is no exception with the increased demands placed on the Coast Guard after September 11th. But there is a limit to what we can ask without compromising their safety and security of the nation. We have made strides this past Congress to ensure appropriations can support the Agency's mission, but even after securing substantial additional funding, budget shortfalls remain. These shortfalls, made chronic by ever-tightening budget caps, will continue to undermine the agency's operational readiness and the safety of its service members until we come up with a solution.

#### TRUCKING

The safety of truck and bus operations in the U.S. is of particular concern to me. Following a horrible bus crash on Mother's Day in 1998, I worked with the Chairman to create the Motor Carrier Safety Administration, and I continue to have concerns about truck and motor coach safety and security.

The issue of Mexican trucks and buses has been highlighted this Congress and while I am glad that a resolution was reached in the Transportation Appropriations bill that was recently approved, this is an area which requires continued oversight. In 2000, 35 percent of inspected Mexican vehicles were placed out of service for significant safety violations, compared with 25 percent of U.S. trucks. In addition, the DOT IG found that there were hundreds of Mexican carriers operating improperly outside of the commercial zones. If we do not have the ability to properly oversee the safety and movements of Mexican trucks when they are only permitted to operate in the U.S. on a limited basis, how can we have any confidence in their adherence to U.S. safety and cabotage requirements if the borders are opened.

#### PIPELINE SAFETY

The Senate has approved bipartisan Pipeline Safety legislation in each of the last 2 years. It is my hope that we can work with the Administration and encourage the House to achieve a strong safety regime for interstate pipeline operators.

#### AMTRAK

Finally, the national passenger railroad system will continue to be a top priority for the members of this Committee. My state is highly supportive of Amtrak and participates directly with Amtrak in the development and implementation of existing and new service throughout Louisiana. The recent finding of the Amtrak Reform Council and the subsequent requirement that Amtrak prepare and submit a plan for its own liquidation has created serious questions within the financial markets about Amtrak's viability. I hope that we can work together to address the short-term and long-term issues facing Amtrak.

Although you will certainly face many challenges, I look forward to seeing both of you confirmed and working with you in the future. Please introduce your families to the Committee and make a brief statement, the text of your written statement with be included in its entirety in the record.

**STATEMENT OF HON. CHRISTOPHER DODD,  
U.S. SENATOR FROM CONNECTICUT**

Senator DODD. Thank you, Mr. Chairman, and I suspect you will be seeing shortly come through the door my colleague as well, Senator Lieberman, who wants to be here as well on behalf of Emil, to express our support for this nominee.

You will see, Mr. Chairman, as you go and take a look at the background qualifications of Emil Frankel, that this is just a first-class nomination, and I want to commend the administration for reaching out to Emil to fill this position. He has had a distinguished career and knows the areas of transportation very, very well. He served as our Commissioner of Transportation in Connecticut for about 4 or 5 years, back in the early 1990s, I might point out during those immediately after the passage of ISTEA, which, as we all know, around the country a transition period and very, very difficult, the first major federal legislation designed to encourage intermodal planning and multimodal operations, and he just did a fabulous job in our state as the Commissioner of Connecticut's Department of Transportation.

Since then, he has been an adjunct professor at the University of Connecticut, a fellow at Harvard and Yale, a graduate of Wesleyan University, Harvard law degree, knows these issues, knows economic development issues. Part of his earlier incarnation was at HUD. You tie these together, you have really got in the person of this nominee a remarkable individual who will bring, I think, some wonderful observations, analysis to the office of Transportation Policy.

So I am just pleased to be—I am glad he asked me to stand and present him to you. I think Joe will echo these comments when you hear from him. He served, as I said, as a very successful Commissioner in our state, and I think across the board in our delegation in Connecticut you will hear nothing but kudos about Emil Frankel.

Senator BREUX. Well, it is good to have you here, Senator Dodd, and it is good to have Mr. Frankel and your delegation supporting you. It is a Republican nomination. You have two Democratic Senators who are strongly in support of you, and that is a good sign. Chris, thank you for being with us.

Senator DODD. Thank you, Mr. Chairman.

[The prepared statement of Senator Dodd follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER J. DODD,  
U.S. SENATOR FROM CONNECTICUT

Thank you for scheduling this important hearing. It is a distinct pleasure to be here in support of the nomination of Emil Frankel to be the Assistant Secretary for Transportation Policy at the United States Department of Transportation.

The American people expect thoughtful analysis of the federal government's transportation choices. The Transportation Policy Office can play an invaluable role in helping DOT decisionmakers understand how new technologies and new approaches to design and community involvement can improve not only transportation, but people's lives. I hope that under Emil Frankel's leadership, the office will remain at the forefront of the federal government's efforts to develop a comprehensive approach to managing our transportation resources.

I have every confidence that Emil will not only succeed, but will excel in his new role. His background and interests betray a remarkable understanding of the infrastructure, business, environmental, and quality of life aspects of transportation policy.

Emil served as the Commissioner of the Connecticut Department of Transportation from 1991 to 1995, during the critical years immediately after passage of ISTEA—the first major federal legislation designed to encourage intermodal planning and multimodal operations. Since leaving ConnDOT, Emil has been an Adjunct Professor at the University of Connecticut and a Fellow at both Harvard and Yale where he has conducted research, written, and taught on issues of transportation policy, transportation and the environment, and public management.

Emil started his academic career in good standing when he graduated from Wesleyan University in Middletown, Connecticut. After graduating from Harvard Law School, he has enjoyed a distinguished career in business, academia and public service. I am delighted that the federal Department of Transportation will now have the advantage of his many talents.

Senator BREAUX. Next, if it is OK, because I think Joe had another engagement—Joe, do you want to go ahead and make comments now? We will love to have Senator Lieberman's comments.

**STATEMENT OF HON. JOSEPH LIEBERMAN,  
U.S. SENATOR FROM CONNECTICUT**

Senator LIEBERMAN. Junior colleagues always find a word, but we always start with an expression of respect for our senior colleague.

Very briefly, I am delighted to come before you today, Mr. Chairman, on behalf of Emil Frankel. He has served as a very able and highly respected Commissioner of Transportation for Connecticut for 4 years. He has extensive knowledge of transportation programs and planning. During those 4 years in Connecticut he oversaw 4,000 employees and a \$1 billion annual budget, was responsible for construction, rehabilitation and management of a genuinely multimodal transportation system, and at the same time he was chairman of the Standing Committee on the Environment of the American Association of State Highway and Transportation Officials.

Since he has left the state, he has been involved as an advisor to the Massachusetts Transportation Authority. I have searched his record, and wanting to create credibility before you, Mr. Chairman, having two Democrat Senators support him, I have looked for some Republican contact, because he served under a truly independent governor of the State of Connecticut but served as legislative assistant to Senator Javits. Did you remember that?

Senator DODD. I did not remember that.

Senator LIEBERMAN. I thought you were here then.

[Laughter.]

Senator LIEBERMAN. Anyway, this is a very good and able person, and I am really thrilled that the President has put him before you for this Assistant Secretary of Transportation.

[The prepared statement of Senator Lieberman follows:]

PREPARED STATEMENT OF HON. JOSEPH LIEBERMAN,  
U.S. SENATOR FROM CONNECTICUT

Mr. Chairman and members of the Committee, I am pleased to come before you to introduce Emil H. Frankel. Mr. Frankel served as a very able and highly respected Commissioner of the Department of Transportation in my state for 4 years and has extensive knowledge of transportation programs and planning. It is with great pleasure that I come before you to strongly support his nomination to the position of Assistant Secretary of Transportation Policy for the U.S. Department of Transportation.

From 1991 to 1995 Mr. Frankel served as Commissioner of the Connecticut Department of Transportation where he oversaw over 4,000 employees and a \$1 billion



annual budget. He was responsible for the construction, rehabilitation, maintenance, and management of a truly multi-modal transportation system. This included Connecticut's highways and bridges, bus and commuter rail services, and airports. Additionally, he was Chairman of the Standing Committee on the Environment of the American Association of State Highway and Transportation Officials and Vice Chairman of the I-95 Corridor Coalition. He has brought to these positions his in-depth understanding of Intelligent Transportation Systems technologies, inter-city rail services, transportation planning and managing, and transportation and air quality.

Since Mr. Frankel left the Connecticut Department of Transportation, he has acted as advisor to the Massachusetts Port Authority on proposals to reorganize state government and worked on a major transportation Joint Feasibility Study for the Massachusetts Turnpike Authority and Massachusetts Highway Department. Furthermore, he served as counsel to the New York City Partnership and Chamber of Commerce regarding federal surface transportation legislation and he advised the Delaware Department of Transportation. He has continued to work with the Connecticut Department of Transportation on management and governance reforms for bus and commuter rail. In other words, he has a strong grasp of transportation, including some exciting areas for transportation innovations. He also truly understands state and local transportation needs.

Mr. Frankel's federal public service includes serving as a Legislative Assistant to Senator Jacob Javits of New York and as a Special Assistant to the Under Secretary of the Department of Housing and Urban Development.

Mr. Frankel has very strong academic credentials; he graduated Phi Beta Kappa from Wesleyan University and was a Fulbright Scholar. From 1981 to 1997 he served as a Trustee to Wesleyan. He received his law degree from Harvard Law School and, in 1995, was a Fellow at Harvard's John F. Kennedy School of Government. At the University of Connecticut, he was an adjunct professor. Currently, Mr. Frankel is a Fellow at the Yale School of Management and a Senior Fellow at the Yale School of Forestry and Environmental Studies.

When Mr. Frankel is not occupied with the teaching and law, he serves as a member on the Governor's Council on Economic Competitiveness and Technology as Chairman of the Council's Transportation Infrastructure Advisory Board. He is Advisor to the National Trust for Historic Preservation, Trustee of the Connecticut Trust for Historic Preservation, and a Director of the Regional Plan Association. Additionally, he was a Selectman for the town of Weston, Connecticut.

While Emil's credentials overwhelmingly speak for themselves and demonstrate his high qualification to be an Assistant Secretary of Transportation, I would like to emphasize my own personal support. His experience in the public and private sector, as well as in academia, allow him to understand the complex nature and importance of transportation in today's economy and society. He is an innovator and thinker with a great understanding of state and local transportation needs. I can think of no better person for the job. I hope you will confirm him quickly and I thank the Chair and Committee members for their time. Thank you.

Senator BREAUX. I appreciate both of your comments. I want to get our House colleagues—I appreciate your comments about his credibility. I noticed—I think I noticed—yes, I noticed that in the conflicts of interest in Mr. Frankel's testimony that Mr. Frankel has agreed to, if he is confirmed, to sell his stock in Enron Corporation.

[Laughter.]

Senator BREAUX. I know that is a tough thing to have to do. We are glad you agreed to do that.

Mr. FRANKEL. I wish I had been here 2 months ago.

[Laughter.]

Senator BREAUX. We are glad to have Congressman Petri here, and any comments you might make.

**STATEMENT OF HON. THOMAS PETRI,  
U.S. REPRESENTATIVE FROM WISCONSIN**

Representative PETRI. Just a word, Senator, to say I have had the opportunity to know Emil Frankel for longer than either one

of us would like to admit, and he is an honorable person, and I think the public is lucky to have the opportunity to benefit from his services. I know that I and a number of us in the transportation area look forward to working with him. He brings a very broad range of experience to his job, and I think will be of great benefit.

Senator BREUX. Thank you very much, Congressman. Congressman Chris Shays, we are glad to have you.

**STATEMENT OF HON. CHRISTOPHER SHAYS,  
U.S. REPRESENTATIVE FROM CONNECTICUT**

Representative SHAYS. Thank you, Mr. Chairman. I am delighted to be here with my two very esteemed Senators, and my colleague from the House, to just say to you that Emil Frankel is probably one of the people I respect the very most. If I was ever in a tight situation, he would be one of the people I would want by my side, and so I think that our new Secretary will find him extraordinarily helpful. I think both the administration will find him very loyal, but I think Congress will find him very responsive, and I just have enormous respect for him.

The only quality I wondered if he had was patience, and I have learned that he is a very patient person, this being December, and his selection process beginning many, many, many, many moons ago.

Senator BREUX. Well, we are going to try to do it as expeditiously as we can, Chris. We thank you and Tom for being with us. We are going to move on and have Congressman Jim Oberstar—Jim, if you would come on up with Mr. Jeffrey Shane, and Mr. Frankel, go ahead and stay at the desk, and we will have both of our nominees at the table, and we will look forward to having Congressman Jim Oberstar's introductory comments for Mr. Jeffrey Shane.

**STATEMENT OF HON. JAMES OBERSTAR,  
U.S. REPRESENTATIVE FROM MINNESOTA**

Representative OBERSTAR. Thank you, Mr. Chairman. First, Mr. Chairman I want to thank you and Chairman Hollings for standing as towers of strength during the aviation security conference negotiations. Thanks to your firm position and visionary view we got the best aviation security bill that the nation has seen, and surpassing even the original 1990 NM 103 bill.

Senator BREUX. Thank you, Congressman. I think you are certainly correct that Chairman Fritz Hollings deserves the lion's share of the credit. He did a truly outstanding job, and I appreciate your comments.

Representative OBERSTAR. I would say that never in the 35-year history of the Department of Transportation has a person been nominated for a position at DOT with better or more appropriate credentials than Jeff Shane, the only exception perhaps being the current Secretary, Norm Mineta.

I was present at the creation of the Department of Transportation in 1966 as administrative assistant to my predecessor, John Blotnick, who chaired the appropriate subcommittee at the request of President Johnson, managed the legislation that crafted the De-

partment, and so I have had a long view of this issue, and those who have filled various positions.

Jeff Shane comes to this position with a sweep of intellect, with the personal and professional integrity, with more than three decades of extensive experience with the Department of State and Department of Transportation on international aviation and trade policy, with credentials that will enable him to take command of the duties of the office on which he is about to enter without breaking stride, with a clarity of purpose, with a clear understanding.

My experience with Jeff Shane extends back over a decade and a half to his service at both the State Department and DOT in the Reagan and George H. Bush administrations. We worked on international aviation and passenger and cargo trade matters. We worked on domestic aviation issues. In my capacity as Chairman of the Aviation Subcommittee, I found Jeff Shane always to be a model of intellectual probity, thoroughly knowledgeable on a wide range of issues on which he was called to act, informed, and consistently and a constantly vigilant, vigorous advocate for U.S. aviation interests, and a skillful, effective international negotiator.

He was the architect of our government's open skies policy, Mr. Chairman, to promote competition in our bilateral aviation agreements. Under this policy, we achieved very significant competitive agreements that advanced the cause of U.S. aviation, turned our share in the most important international aviation markets from 40–60 American-foreign, or 30–70 to 70–30 and 60–40 in favor of the United States. The Clinton administration continued those policies with great success.

But his experience extends beyond aviation to other modes of transportation. I would just recall a conversation that Jeff and I had early in 1992. In the aftermath of the enactment of ISTEA, we were having a discussion about the significance of this legislation and he said, it is one of the most extraordinary, innovative transportation measures ever enacted. It has had the exceptional benefit of causing Assistant Secretaries at the policy level in the Department to get together to share our thoughts, understand each other's mode of transportation better, to begin thinking and acting intermodally, something we have long needed to do. That is the kind of person I want to see in the Department of Transportation.

Secretary Mineta has told me several times that he wants Jeff to upgrade the Department's Policy Office to create, as he put it, a world class think tank. Well, I support those efforts, and in fact 2 years ago while Jeff was in the private sector he and Charlie Honicutt, who came to me and out of concern about the level of staffing at DOT—Honicutt also held the same position in the Clinton administration—to explore means of upgrading the aviation policy staff. Normally, folks out in the private sector, they have left government, they forget about the public policy issues, but Jeff was concerned.

We met weekly to fashion ideas, approaches, strategies to get the funding necessary to buildup the staff, which in the demise of the CAB, when it was transferred over to DOT, was one time 300, is now well under 100, and half of those are at retirement age, and you do not have the critical expertise in the Department to analyze these multibillion dollar aviation trade deals that we are in the

process of negotiating. Jeff Shane is concerned about it, and wanted us to do the right thing, took an enormous amount of time to address this issue, and now he will have the opportunity to first-hand deal with it, with the support of the Secretary.

I can think of no one better qualified to attract new staff, to keep them and to inspire them., and in these post September 11 times, in the aftermath of enactment of this landmark aviation and transportation security law, DOT needs at the policy level a person with Jeff Shane's experience, intellectual capacity, honesty, openness to new ideas, and the energy to pursue and implement innovation. His reentry into public service, Mr. Chairman, will produce better transportation policy decisions to the benefit of our nation's economy and to the benefit of the Department, and to the benefit of the American public generally.

Senator BREAUX. Well, Congressman Oberstar, thank you for coming over from the House. You are truly the transportation guru of the House, and those remarks coming from you are very encouraging about your relationship with Mr. Shane and your knowledge of his background, and your support is very important.

It is clear that both of these nominees have bipartisan support from both Republicans and Democrats, and that has got to be a very positive indication about the job they are going to be able to do.

So Congressman, thank you for being with us, and you can go back and do something over there.

[Laughter.]

Senator BREAUX. Gentlemen, we have heard some nice words about both of you. We would like to hear from you. Mr. Shane, we will allow you to go first, if you would give your statement, and then we will follow with Mr. Frankel.

**STATEMENT OF MR. JEFFREY SHANE, NOMINEE TO BE  
ASSOCIATE DEPUTY SECRETARY OF TRANSPORTATION AT  
THE DEPARTMENT OF TRANSPORTATION**

Mr. SHANE. Thank you, Mr. Chairman. Before Congressman Oberstar leaves, I just want to express my profound gratitude to him for those very, very gracious remarks. Having him here means more than I can say, and I really am grateful to you for taking the time, especially in this environment. Thanks so much.

Mr. Chairman, I have a prepared statement, a longer statement that we have submitted, and I would ask that that be included in the record. I would like to summarize that.

First, I really do want to express my gratitude to the Committee and to you personally in this busiest of times for holding the hearing today. I want to underscore my commitment from the very outset, if I am fortunate enough to be confirmed by the Senate, to continue to work with this Committee and its staff as in past years as closely as possible in addressing the extraordinary challenges that confront our nation's transportation system today.

Mr. Chairman, my wife, Jean Wu is here today, and I have relied heavily on her understanding and encouragement. From the moment I first considered putting my law practice on hold for a possible return to government, she has been a full partner in this en-

terprise, and I am eternally grateful for her wisdom and her support, and for her love.

Senator BREAUX. We are glad to have her as well.

Mr. SHANE. While I am expressing thanks, let me of course say how grateful I am to President Bush, to Secretary Mineta, to Deputy Secretary Michael Jackson for inviting me to join the superb team they have assembled at the Department of Transportation. If I am fortunate enough to be confirmed by the Senate, this appointment will represent my fourth tour of duty at DOT. For the past 8 years, my legal practice has been largely devoted to transportation issues. A variety of extracurricular activities have also been about transportation. All of this is detailed in the material I submitted to the Committee.

It is fair to say I have been involved in transportation policy for the greater part of my professional life. I do not know of any issues that are more important to the long-term economic vitality of this country. That is why it would be such an honor and such a privilege to be able to return to DOT and to continue this work.

As you know, Mr. Chairman, Secretary Mineta has proposed a reorganization of the Office of the Secretary to ensure a more effective transportation development function there than has existed for some time. The Secretary has proposed that I head up that new structure, and the administration has proposed to the Congress a small legislative adjustment to the Secretary's senior staff to facilitate that new restructuring.

I have spent enough years at the Department to know quite a lot about what works and what does not, and I have every confidence that this reorganization will work. I hope, therefore, that if I am confirmed I will be in a position to help breathe some life into Secretary Mineta's vision.

The events of 9/11 have altered DOT's agenda in fundamental ways. The Aviation and Transportation Security Act is a seminal piece of legislation, an act of which the Congress can be immensely proud, and I can report that the Department began working full bore on its implementation even before it was signed. In my temporary advisory capacity at the Department I have been working with the Secretary's team on establishing this new Transportation Security Administration, and I can report that the effort those far has been both extremely intense and extremely impressive.

The implications of that legislation, however, go far beyond the establishment of a new agency, or the many specific requirements that it contains. That act, the Port, Maritime and Rail Security legislation which has been introduced, and perhaps future acts of Congress, leave no doubt that we have a fundamental obligation to perform all of our jobs within a new and more security conscious environment. What we need is a new culture within our transportation sector, one that treats security as an essential element of the logistics process.

The administration and the Congress have some big issues to address during the next few years, during which we will have to reauthorize all of our major transportation programs, but from this point on we will have to take up those issues within the context of a security challenge the dimensions of which we are only now

beginning to understand. It would be an immense privilege to be able to work with you in that essential enterprise.

Let me conclude by saying again how honored I am that the President has nominated me for this position. I thoroughly enjoyed working with this Committee and its staff during my past tours in the executive branch, and I very much hope that I will have the opportunity to do so again. I hope that it will be possible, with the Senate's advice and consent, to get to work very soon.

Thank you very much.

[The prepared statement and biographical information of Mr. Shane follow:]

PREPARED STATEMENT OF JEFFREY N. SHANE, ASSOCIATE DEPUTY  
SECRETARY-DESIGNATE, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee:

First, I want to express my gratitude to the Committee for your willingness, in this busiest of times, to schedule this hearing. I also want to underscore my commitment from the very outset, if I am fortunate enough to be confirmed by the Senate, to work with the Committee and its staff as closely as possible in addressing the extraordinary challenges that confront our nation's transportation system today.

I am extremely grateful to President Bush, Secretary Mineta, and Deputy Secretary Jackson for inviting me to join the superb team they have assembled at the Department of Transportation.

My wife, Jean Wu, is here today. I have relied heavily on her understanding, encouragement, and guidance from the moment I first considered putting my law practice on hold for a possible return to government service. She has been a full partner in this enterprise, and I am eternally grateful for her wisdom, her support, and her love.

Finally, let me express my heartfelt thanks to my good friend Congressman Jim Oberstar for his gracious introductory remarks this afternoon. Having him here means more than I can say.

Let me start by summarizing my background.

If I am fortunate enough to be confirmed by the Senate, this appointment will represent my fourth tour of duty at the Department of Transportation. My first began in the late 1960s, when I served as a trial attorney and later Special Assistant for Environmental Affairs in the Office of the General Counsel. I appeared for DOT in a great many regulatory proceedings before the Interstate Commerce Commission, the Civil Aeronautics Board, and the federal Maritime Administration, and spent a considerable amount of time on the implementation of the National Environmental Policy Act in the context of the nation's transportation programs.

In 1979, after several years of traveling and working overseas—mostly as an environmental lawyer for the United Nations Development Program—I returned to DOT as Assistant General Counsel for International Law. After four years in that position I moved to the Office of Policy and International Affairs as Deputy Assistant Secretary.

In 1985 I moved to the Department of State as Deputy Assistant Secretary for Transportation Affairs to serve, among other things, as chief aviation negotiator. I remained at State for four years.

I served as Assistant Secretary of Transportation for Policy and International Affairs from 1989 to early 1993, working for Secretaries Samuel Skinner and Andrew Card on the full range of transportation issues for which DOT has responsibility.

Since early 1993 I have been practicing law. I am currently a partner at Hogan & Hartson in the firm's Washington office.

I should also mention some extracurricular activities that I have been engaged in during my time as a private practitioner. First, from 1994 until about a month ago I served as a Vice President of the National Defense Transportation Association and as Chairman of its Military Airlift Committee. The Committee exists for the purpose of fostering as healthy and productive a relationship as possible between the Defense Department and the civilian providers of airlift on whom DOD relies so heavily at all times.

Second, also for the past seven years, I served as Chairman of the Commission on Air Transport of the International Chamber of Commerce. The Chamber represents the international business community before governments everywhere, and

the Air Transport Commission's job is to formulate sensible positions, on behalf of business enterprise the world over, in the area of aviation policy.

Finally, I was recently elected chair of the American Bar Association's Forum on Air and Space Law—a large group of lawyers around the country who specialize in aviation and space issues.

You will have inferred from this history that I have been involved in transportation policy for the greater part of my professional life. That is why it would be such an honor and privilege to be able to return to the Department of Transportation and continue this work.

I am enthusiastic about this opportunity for a number of reasons. First, I have known Secretary Mineta for many years. Based on his 21 years of service in the Congress, he brought a level of experience in federal transportation programs to the Secretary's office on his first day in the job that we have not seen in a very long time. I knew from the outset that this is likely to be a uniquely productive time for DOT under his leadership, and therefore the right time to be a part of the DOT team.

Deputy Secretary Michael Jackson was a friend and colleague during the first Bush Administration, when he served as Chief of Staff to then Secretary Andrew Card. Mr. Jackson is another extraordinarily talented public servant and it would be a special privilege to work closely with him once again.

As you know, the Secretary has proposed a reorganization of the Office of the Secretary to ensure a more effective transportation policy development function than has existed for some time.

Secretary Mineta has proposed that I head up the new structure. I have spent enough years at the Department to know quite a lot about what works and what doesn't, and hope, if confirmed, that I will be able to help breathe life into his vision. I am looking forward to returning to the Committee to discuss the details of the restructuring at the appropriate time.

Like all nominees who come before this Committee, I was asked to respond in writing to a number of thoughtful questions about why I am attracted to this position, why I believe I am qualified to hold it, and what I hope to accomplish if confirmed. I don't want to take time now to reiterate what I said in that questionnaire. I do want to say, however, that the events of 9–11 have altered DOT's agenda in fundamental ways. The Aviation and Transportation Security Act is a seminal piece of legislation—an act of which the Congress can be immensely proud—and I can report that the Department began working full-bore on its implementation even before it was signed by the President.

The implications of that legislation go far beyond the establishment of a new Transportation Security Administration, or the many specific requirements that it contains. That act, the port security legislation which is currently pending, and perhaps future acts of Congress, leave no doubt that we have a fundamental obligation to perform all of our jobs within the context of a new and more security-conscious environment. What we need, I believe, is a new culture within our transportation sector—one that treats security as an essential element of the logistics process. We have the tools—notably the technology—to make our system much tighter than it is today, and we have no alternative other than to do so with all available speed.

The Department of Transportation and the Congress have some big problems to address during the next few years, during which we will have to reauthorize all of our major transportation programs. But from this point on we will have to take up those issues within the context of a security challenge the dimensions of which we are only now beginning to understand. It would be an immense privilege to be able to work with you in that essential enterprise.

Let me conclude by saying again how honored I am that the President has nominated me for this position. I thoroughly enjoyed working with this Committee and its staff during my past tours in the Executive Branch, and I very much hope that I will have the opportunity to do so again. I hope that it will be possible, with the Senate's advice and consent, to get to work very soon.

I would be pleased to respond to any questions you might have.

#### A. BIOGRAPHICAL INFORMATION

1. Name: Jeffrey N. Shane (Nickname: Jeff).
2. Position to which nominated: Associate Deputy Secretary of Transportation.
3. Date of nomination: October 10, 2001.
4. Address: (Information not released to the public.) Office: Hogan & Hartson L.L.P., 555 Thirteenth Street, N.W., Washington, DC 20004–1109.
5. Date and place of birth: March 27, 1941, New York, NY.

6. Marital status: Married to Dzing Jean Wu.
7. Names and ages of children: N/A.
8. Education: (High School): Hempstead H.S., Hempstead, NY (9/54–6/57), West Hempstead H.S., West Hempstead, NY (9/57–6/58), High School Diploma, June 1958; (College): Princeton University, Princeton, NJ, A.B., June 1962; (Law School): Columbia Law School, New York, NY, LL.B., June 1965.
9. Employment record: Turret lathe operator, Sylvania-Corning Nuclear Corporation, Hicksville, NY, 6/59–9/59; Waiter, Frontier Village, Lake George, NY, 6/60–9/60; Management trainee, New York Telephone Company, Hempstead, NY, 6/61–9/61; Counselor, Camp Timber Lake, Phoenicia, NY, 6/62–9/62; Investigator, Retail Credit Co., New York, NY, 6/63–9/63; Summer Intern, Voice of America, Washington, DC, 6/64–9/64; Research Assistant, Columbia University, New York, NY, 9/65–10/65; Legislative Analyst, Basic Systems, Inc., New York, NY, 3/66–9/66; Trial Attorney, Federal Power Commission, Washington, DC, 6/66–4/68; Trial Attorney and Special Assistant to the General Counsel, Dept. of Transportation, Washington, DC, 4/68–10/72; Attorney and special investigator, Dept. of Transportation, Washington, DC, 3/74–7/74; Consultant, Environmental Law Institute, Washington, DC, 7/74–11/75; Attorney, United Nations Development Programme, Bangkok, Thailand, 11/75–1/78; Attorney and consultant (self-employed), Washington, DC, 1/78–12/78; Project Director, Library of Congress, Washington, DC, 12/78–3/79; Assistant General Counsel for International Law, Dept. of Transportation, Washington, DC, 3/79–3/83 Deputy Assistant Secretary for Policy and International Affairs, Dept. of Transportation Affairs, Dept. of State, Washington, DC, 3/85–6/89; Adjunct Professor of Law, Georgetown University, Washington, DC, 1985–89; Assistant Secretary for Policy and International Affairs, Dept. of Transportation, Washington, DC, 6/89–1/93; Counsel, Wilmer, Cutler & Pickering, Washington, DC, 4/93–12/96; Partner, Wilmer, Cutler & Pickering, Washington, DC, 12/96–4/00; Partner, Hogan & Hartson L.L.P., Washington, DC, 4/00–present.
10. Government experience: Member, Architectural and Transportation Barriers Compliance Board, 1989–93 (Vice-Chairman, 1992–93); Vice-Chairman, Advisory Commission on Conferences in Ocean Shipping, 1992; Member, Study Group of Experts on Future Regulatory Arrangements, International Civil Aviation Organization, 1993–94.
11. Business relationships: Director, A. A. & S. Real Estate, Inc. (family corporation established for estate planning purposes) Director, Albert Shane, Inc. (family corporation established for estate planning purposes).
12. Memberships: Member, D.C.; Bar Member, American Bar Association; Chairman, Commission on Air Transport, International Chamber of Commerce (Paris), 1994–present; Vice President, National Defense Transportation Association, and Chairman, NDTA Military Airlift Committee, 1994–present; Chair, American Bar Association Forum on Air and Space Law, 2001–present; Member, International Aviation Club of Washington (President, 1999–2000) Member, Aero Club of Washington; Member, Board of Directors, International Institute of Air and Space Law, Leiden University, Holland, 1993–95; Member, Wings Club, 1993–present (Board of Governors, 1994–97); Member, Cosmos Club, 1987–present; Member, Columbia Country Club, 2000–present.
13. Political affiliations and activities: (a) None. (b) None. (c) Oberstar, James—via Friends of James Oberstar: 10/07/1997—500.00, 04/21/1999—500.00, 09/14/1999—500.00, 02/09/2000—500.00; Allen, George—via Friends of George Allen: 08/11/2000—1000.00; Lazio, Rick A—via Lazio 2000 Inc: 09/30/2000—1000.00; Republican National Committee-RNC: 11/01/2000—1000.00; Hogan & Hartson Political Action Committee: 10/02/2000—950.00; Dole, Elizabeth—via Elizabeth Dole for President Exploratory Committee Inc: 03/30/1999—1000.00; Bush, George W—via Bush for President Inc: 06/30/1999—1000.00; Reid, Harry—via Friends for Harry Reid: 12/28/1997—500.00; Hogan & Hartson Political Action Committee: 04/23/2001—1100.00; McCain, John S—via McCain 2000 INC: 02/15/2000—1000.00.
14. Honors and awards: Full-tuition academic scholarship, Princeton University (1958–62); New York State Regents' Scholarship, Columbia Law School (1962–65); Presidential Meritorious Rank Award, Department of State, 1988; Senior Executive Service Performance Award, Department of State, 1987; Secretary's Medal for Meritorious Achievement, Department of Transportation, 1971.
15. Published writings: "Aviation Policy: Who Decides?" *LatinCEO*, June 2001; "It is Time for Foreign Investors," *Business Travel News*, October 1998; "The Changing Nature of International Aviation," FTL Memorandum M89–4, Flight Transportation Laboratory, Massachusetts Institute of Technology, December 1989; "Challenges in International Civil Aviation Negotiations," U.S. Department of State, Bureau of Public Affairs, Washington, D.C., February 1988; "Getting to Yes in International



Aviation Negotiations: An Impossible Dream?", *ITA Magazine* No. 37, September 1986; "Environmental Law in the Developing Nations of Southeast Asia," in Colin MacAndrews and Chia Lin Sien, eds., *Developing Economies and the Environment: The Southeast Asian Experience* (to be published November 1978 by McGraw-Hill); "Asian Nations Focus on Environmental Law," *Environmental Policy and Law*, Autumn 1978 (to be published November 1978); Statement on applicability of National Environmental Policy Act to U.S. Government activities abroad, presented to Subcommittee on Resource Protection, Senate Committee on Environment and Public Works, September 1978; "Environmental Law: Closing the Gap," *Business in Thailand*, August 1978; "Coastal Management Legislation in Sri Lanka," report to the Regional Office for Asia and the Pacific, U.N. Environment Program, Bangkok, Thailand, February 1978. "Environmental Law and Technical Cooperation: Agenda for Asia and the Pacific," paper presented at ESCAP/UNEP Expert Group Meeting on Environmental Protection Legislation, December 1977, Bangkok, Thailand; "Environmental Law in Thailand," project working paper, U.N. Task Force on Human Environment, November 1977; "Legal Aspects of Environmental Protection in Asia," paper presented at Fifth LAWASIA Conference, Seoul, Korea, August 1977; "Legal Aspects of Environmental Management in Malaysia," project working paper, U.N. Task Force on Human Environment, January 1977; "The Use of Environmental Impact Statements in the United States," background paper, U.N. Task Force on Human Environment, September 1976; *NEPA in Action: The Impact of the National Environmental Policy Act on Federal Decision-Making*, 1975, book-length report to the U.S. Council on Environmental Quality, prepared in association with the Environmental Law Institute, Washington, D.C. (principal co-author, with Roan Conrad and Susan B. Pondfield); "Enforcement of Water Pollution Controls in California and EPA Region IX," 1975, a report to the U.S. National Commission on Water Quality, prepared in association with the Environmental Law Institute, Washington, D.C.; "Ecology in Transportation," *I.C.C. Practitioners Journal*, Vol. 39, p. 808 (1972); "Environmental Litigation in 1971," Highway Research Circular No. 135 (published by the Highway Research Board of the National Research Council), May 1972; "Marijuana Law," *The New Republic*, March 28, 1968; "Draft Those Reservists?" *The New Republic*, September 17, 1966.

16. Speeches: Please see accompanying compilation.

17. Selection: (a) I believe it was felt that my 14 years of experience at the Department of Transportation in a variety of legal and policy positions, together with 4 years supervising our international transportation negotiations at the Department of State and 8 years of practicing transportation law in the private sector, provided a suitable background for the position. (b) During my previous government service I had the opportunity to work with most of the Department of Transportation's modal administrations on a variety of issues. As Assistant Secretary for Policy and International Affairs (1989-93) I was involved at a senior level in the entire range of policy issues for which DOT has responsibility, both domestic and international. My time in the private sector, predictably, has enhanced further my understanding of many of those issues. I believe that the sum total of that experience will be invaluable in equipping me to assist the Secretary of Transportation and the President in addressing the important transportation policy challenges that face our country today.

#### B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes—with the single exception of two family corporations of which I am an officer.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. Please refer to the Deputy General Counsel opinion letter.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Please refer to the Deputy General Counsel opinion letter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? Please refer to the Deputy General Counsel opinion letter.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. I have long believed, as a matter of personal conviction, that the United States should liberalize restrictions in its laws that impede U.S. airlines' access to the global capital market. I have made a great many speeches expressing that view, have written articles to that effect, and I have, on a few occasions, expressed that view in private conversations with Members of Congress and congressional staff members. On a few occasions, I expressed the same view on behalf of an aspiring foreign investor in the U.S. airline industry who was my client.

In another assignment, I indirectly assisted in the preparation of legislative language designed to tighten up U.S. law in connection with the "Fly America" requirements as applied to foreign military sales to Israel.

Finally, I communicated with agencies of the U.S. Government and congressional offices in an effort to persuade the Agency for International Development to use U.S. airlines for the emergency shipment of foodstuffs to Honduras rather than employing a Russian airline.

I have not mentioned a larger number of examples which I pursued on clients' behalf in the context of administrative proceedings before the Department of Transportation.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Please refer to the Deputy General Counsel opinion letter. A copy of my ethics agreement with DOT is enclosed.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. The FBI reported to me in late September of this year that a complaint was filed against me in February 1994 with the Public Integrity Section, Criminal Division, Department of Justice, alleging that, while still employed by the Department of Transportation, I entered into negotiations regarding post-government employment with a company doing business with the Department. The file was apparently closed without action in October 1994. I was never interviewed with respect to this complaint and was wholly unaware of it until the FBI brought it to my attention last month during the course of my pre-appointment background investigation. I have never been disciplined or cited for any breach of ethics or unprofessional conduct by any government agency or other entity.

2. Have you ever been investigated, arrested, charged or held by any federal, state, or other law enforcement authority for violation of any federal, state, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. See previous answer regarding an apparent Justice Department investigation in 1994. I have never been arrested, charged, or held by any federal, state, or other law enforcement authority for violation of any federal, state, county, or municipal law, regulation or ordinance, other than minor traffic offenses.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? Since leaving government in early 1993 I have been a partner in two major Washington law firms. I sure that each has been involved from time to time as a party in interest in administrative agency proceedings and in civil litigation. I have had no direct involvement in any such proceedings or litigation.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

#### E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? I will certainly do everything within my power to ensure that such deadlines are routinely met.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? I will do everything within my power to ensure that the Department of Transportation protects congressional witnesses and whistle blowers from reprisal.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. As a lawyer with a practice substantially devoted to regulatory issues, my training and experience amply equip me to understand whether a proposed regulation complies not only with the letter, but also with the spirit of enabling or other relevant legislation. I am also fully aware of Congress's interest in seeing laws implemented promptly. I know that Secretary Mineta and Deputy Secretary Jackson are fully committed to enhancing the Department's performance and to increasing the Department's accountability in this regard. I wholly share that commitment, and look forward to joining them in achieving this important objective.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Department of Transportation is charged with providing leadership in the development and administration of policies and programs that ensure the availability of safe, secure, efficient, coordinated, competitive, cost-effective, and environmentally sound transportation services as a critical ingredient in the economic health of our country. From the Department's inception, safety has been its most important goal; it remains so today, particularly in this time of extraordinary challenge to the security of our transportation system. A second key objective is the maintenance and expansion of the nation's transportation infrastructure. Third, the Department must enhance mobility by ensuring the availability of fully accessible, competitive, and affordable transportation services to all of our citizens. Fourth, the Department has important law enforcement responsibilities such as those of the U.S. Coast Guard for interdicting attempted importation of illegal drugs or other contraband and for preventing the pollution of our waters. I have worked with each of the Department's modal administration over the years in carrying out the Department's mission, and I look forward enthusiastically to doing so again if I am confirmed.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

#### F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated. I have spent the major portion of my career in public service. Most of that time was devoted to transportation policy issues at the federal level. In my last federal government assignment—Assistant Secretary of Transportation for Policy and International Affairs—I was the senior advisor to the Secretary of Transportation on the full range of policy issues for which the Secretary has responsibility.

2. Why do you wish to serve in the position for which you have been nominated? I did not seek this opportunity. When it was first presented, I felt some ambivalence, having already enjoyed so many tours of duty in public service, and having found a home in a wonderful law firm with a practice that, after 8 years, had hit its stride. Following a lengthy deliberation, however, I concluded that, for someone with my particular background and interests, it would be a profound mistake to say no—to forgo the opportunity to spend at least a few more years working to rebuild our nation's transportation infrastructure, to address the congestion and gridlock that threaten to impede our future economic growth, to help ensure the safety and security of our transportation system, and to ensure the maintenance of meaningful competition for the benefit of travelers and shippers of goods, both domestically and internationally. The extraordinary quality of DOT's current leadership—Secretary

Norman Mineta and Deputy Secretary Michael Jackson—was an essential factor in my decision to pursue this position. That President Bush has chosen so qualified a team of managers for the Department bodes very well for transportation policy during this Administration.

The events of September 11, 2001, will alter DOT's agenda, at least for a time, but they have only served to underscore my conviction that this is clearly the right thing for me to do, if the Senate agrees.

3. What goals have you established for your first 2 years in this position, if confirmed? My most immediate personal goal will be to work closely with the Secretary, Deputy Secretary, and modal administrators to refresh the Department's transportation policymaking capability; Given the events of September 11, 2001 and their aftermath, an essential goal must be the securing of our transportation system and the restoration of public confidence in it. These attacks on our country have taken the challenge to an entirely new level, and an effective response will require an extraordinary commitment of resources, both human and financial. Much has been accomplished by the Department and the Administration in recent weeks in cooperation with Congress, there is much more to be done; The nation's surface transportation and aviation programs will shortly be up for reauthorization. The Department's challenge will be to exploit these opportunities for the 14 purpose of ensuring the availability of a national transportation infrastructure that not merely accommodates, but encourages the economic growth of our country; Closely tied with the previous goal is a growing concern about the quality of competition in our transportation system. DOT, in cooperation with the Department of Justice, must find ways to enhance competition in our transportation system. Any measures adopted for the enhancement of consumer welfare in this regard, however, must be taken without compromising deregulation; Unless immediate steps are taken to augment DOT's professional staff—notably in the areas of transportation policy generally and aviation policy in particular—the Department simply will not have the wherewithal to carry out its mission. Accordingly, a major goal is to encourage in any way I can an effective response to this problem. Secretary Mineta has stated the same thing, and I strongly support his views.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? I believe my 18 years in a variety of transportation policy positions equips me well for the responsibilities I will assume if confirmed.

5. Who are the stakeholders in the work of this agency? The primary stakeholders for DOT are, of course, the traveling and shipping public. Other important stakeholders are the providers of transportation, both direct and indirect, our transportation workforce, state and local transportation agencies, and, of course, the Congress.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10. Given my proposed role in helping to shape transportation policy at the federal level, I believe it is essential that I maintain an open channel for communications with all stakeholders. In my experience, a constant challenge for federal policymakers is to remain closely in touch with those likely to be affected by the federal government's decisions.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? As a senior manager at the Department of Transportation, I would be obligated to ensure that the Department approaches its programs in an effective, business-like way, wholly within available budgetary resources. I know that Secretary Mineta is committed to improving the Department's performance on this front, and I will support him in every way possible. (b) What experience do you have in managing a large organization? As Assistant Secretary of Transportation for Policy and International Affairs, I managed a staff of 185–200. I supervised three Deputy Assistant Secretaries and five office directors, and a greater number of division chiefs. I held that position for 4 years (1989–1993), and served as a Deputy Assistant Secretary in the same office for 2 years (1983–1985).

As Deputy Assistant Secretary of State for Transportation Affairs (1985–1989) I supervised a staff of approximately 30.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. The most important responsibility of any public servant privileged to serve in a decisionmaking capacity is to help set the public policy agen-

da. Unless there is a determined effort to establish identifiable performance goals, the tendency to slip into a passive mode of operation is almost irresistible. At this point in my own career, joining a government agency provides the opportunity to participate in the setting of the agenda and then to help ensure that it is accomplished in real time. The responsibility to report to Congress on the Department's success in achieving established goals helps to ensure that the agenda isn't subordinated to merely "answering the mail." (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? Congress should attempt to analyze the organic reasons for an agency's failure to achieve its performance goals. In some cases, no doubt, ineffective management may be the root cause, and improvements on the managerial front may be a sufficient remedy. In other cases, it may well be that a Department function would be carried out more effectively at a different level of government or in the private sector. Still other programs may be found, upon investigation, to have outlived their usefulness and be targets for elimination. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? My performance should be measured against the goals I outlined in the answers to Question 3. I will be particularly disappointed if, by the time this tour of duty ends, DOT does not have a more effective policymaking capability, and has not hired new staff 16 capable of carrying the Department's mission forward following the anticipated retirement of large numbers of professionals in the next few years. Similarly, the quality of the Department's contribution to the process of reauthorizing the federal aviation and federal highway programs should be seen, I think, as another performance indicator for the position I hope to assume. Finally, I hope it will be possible to look back on important improvements and the quality of competition found in our domestic airline industry.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe that the first duty of a manager is to empower employees and to create the most interesting and engaging work environment possible. To be productive, the supervisor-employee relationship must be characterized by mutual respect and collegiality. Given the extraordinary quality of the Department's career professionals, it will not be difficult to adhere to this model. No employee complaints have been brought against me.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. In a number of my past positions in the federal government, I have been called upon to meet with and testify before Members of Congress on a regular basis. The opportunity to exchange views with Members of Congress and staff on key issues has been one of the great privileges in these positions. I am looking forward to further opportunities to engage the Congress.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. The Inspector General is charged with looking at the Department's activities with a more detached, independent, and objective view than those of us "on the line" are likely to have. For that reason, the IG is often in a position to offer essential insights and constructive criticism of the Department's activities. I have always tried, in past positions at the Department, to engage the Inspector General in a spirit of cooperation, with communications predicated on mutual integrity, respect, and a shared commitment to problem solving. I would expect to maintain this approach if confirmed. I know that Secretary Mineta and Deputy Secretary Jackson will insist that the Department bring this spirit to all interactions with the Inspector General.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. As a lawyer with a practice substantially devoted to regulatory issues, my training and experience amply equip me to understand whether a proposed regulation complies not only with the letter, but also with the spirit of enabling or other relevant legislation. I will make myself readily available to the Committee and its staff to address concerns relating to regulations issued by the Department of Transportation.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. Congress and the Administration are already addressing the most important near-term priority: the establishment of much tighter security measures for our transportation system, with a particular focus on aviation.

The most important long-term priority for Congress in the transportation policy arena will be the reauthorization of our transportation infrastructure programs.

There is an even greater danger now, given the current downturn in economic activity—and the consequent reduction in demand for transportation—that we will be misled into believing that our infrastructure is adequate. It would be a huge public policy mistake not to take steps now to ensure that our transportation system is fully capable of supporting a more robust level of economic activity.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. I wholly agree that discretionary spending must be predicated on a clearly articulated set of policy objectives and that decisions must be made pursuant to transparent criteria. I will have to acquaint myself with the extent to which this principle already characterizes DOT spending programs. If not, I look forward to an early project to address this issue more effectively.

Senator BREAU. Mr. Shane, thank you very much for that statement.

Mr. Frankel, we are pleased to have your statement now.

**STATEMENT OF MR. EMIL FRANKEL, NOMINEE TO BE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY AT THE DEPARTMENT OF TRANSPORTATION**

Mr. FRANKEL. Than you, Mr. Chairman. I, too, would request that my written statement be included in the record, and I will just excerpt from it, and although they are not here any longer, I really want to also express for the record my profound thanks and appreciation to my two Senators and my two long-time friends who are Representatives, Congressman Petri and Congressman Shays.

It is a great privilege to be here before you, and I appreciate particularly your willingness to consider my nomination with so many other urgent and critical legislative matters before the Congress. Needless to say, I am humbled and honored to be nominated by President Bush for the position of Assistant Secretary for Transportation Policy, and I appreciate the opportunity that Secretary Mineta and Deputy Secretary Jackson have extended to me to assist them and the great team that Secretary Mineta has assembled in shaping national transportation policy at this time.

As you have already heard, I spent 4 years running or leading a multimodal state transportation agency, but I think importantly as state Transportation Commissioner I never forgot that the agency I led was providing some service to every resident and every business in the state every day, and that what we did affected people's daily lives and their work, and I think that speaks to the transportation field generally, and certainly to the United States Department of Transportation.

I believe strongly in the need to continue moving toward a transportation system that operates seamlessly and one which provides for greater coordination between freight and passenger modes. I know that is something to which you are committed personally, and the leaders in the Congress, and certainly Secretary Mineta, are equally committed to. As a result of the experience I have had at the state and local levels, I believe that I can bring an important and relevant perspective to the development of policy at the federal level, and I hope that I can contribute to the goal of a Department of Transportation that speaks with one voice across all modes.

I have remained deeply involved in the transportation field since I left state service in 1995, and therefore am looking forward cer-

tainly to becoming reengaged now at the federal level. The events of September 11 have underscored, I think, the pivotal role that transportation plays in the nation's prosperity and quality of life. Our obligation now is to enhance the safety and the security of our transportation system in every way possible. At the same time, we must ensure that the nation's transportation system emerges from this transformation, this crisis, even stronger and more efficient than before.

We need to focus, even as we are focusing on issues of airport security and maritime security, and the surface transportation field, that we also have to focus again on critical transportation issues which perhaps have somewhat receded from public attention in the past 3 months. Secretary Mineta has often said that nothing has as great an impact on economic development patterns of growth and quality of life as transportation. We face an urgent need together to ease congestion of all modes of transportation, and to improve the connections between modes for people and goods. That is, to focus on issues of efficiency and reliability, even as we are giving renewed and even more urgent attention to questions of safety and security.

In the next 2 years, Congress will be taking up reauthorization of the Department's surface transportation and air programs, as well as other critical bills affecting virtually every mode of transportation, and I look forward to supporting the President and the Secretary and to working with this Committee and other Members of Congress in addressing these vital tasks.

In the years since I first assumed an executive position in the transportation field, I have developed a passion for this field, a passion that I am certain you share. I think that we all recognize that the ultimate stakeholders in the transportation system are the citizens and businesses of America who rely on the transportation sector to move people and goods safely and efficiently. If confirmed, I pledge all of my energy and efforts toward meeting the critical challenges which we now face in restoring and restrengthening the nation's transportation system, and I look forward to working with you and your colleagues in improving and protecting our nation's transportation system.

I know we look forward, both of us now, to responding to any of your questions.

[The prepared statement and biographical information of Mr. Frankel follow:]

PREPARED STATEMENT OF EMIL H. FRANKEL, ASSISTANT SECRETARY FOR  
TRANSPORTATION POLICY-DESIGNATE, DEPARTMENT OF TRANSPORTATION

Thank you, Mr. Chairman and members of the Committee.

It is a great privilege to appear before the Committee today. I appreciate the Committee's willingness to consider my nomination in the midst of so many urgent and critical legislative matters.

I am honored to be President Bush's nominee for Assistant Secretary for Transportation Policy of the Department of Transportation. I appreciate the opportunity, which Secretary Mineta has extended to me, to assist him in shaping national transportation policy at this critical time.

For over ten years I have been deeply involved in the transportation field. For four years I led a state transportation agency, as Commissioner of Transportation of Connecticut. In that capacity I led a consolidated multi-modal transportation agency, making policy and implementing programs for all elements of the state's transportation system—for the construction, maintenance and management of high-

ways, bridges and arterial roads, for commuter rail and bus services, and for commercial and general aviation airports and seaports.

As state transportation commissioner, I never forgot that the agency I led was providing some service to every resident and business of the state every day and that what we did affected people's daily lives and their work. I believe strongly in the need to continue moving towards a transportation system that operates seamlessly, and one which provides for greater coordination between freight and passenger modes.

As a result of my experience at the state and local levels, I believe that I can bring an important and relevant perspective to the development of policy at the federal level, and I hope that I can contribute to the goal of a Department of Transportation that speaks with one voice, across all modes.

Since leaving state government, I have remained deeply engaged in these issues—as a professional, providing legal and consulting advice to public agencies and private organizations engaged in transportation services and infrastructure development, and as a teacher of transportation policy and public management at the undergraduate and graduate school levels.

The events of September 11 have underscored the pivotal role transportation plays in the nation's prosperity and quality of life. Our obligation now is to enhance the safety and security of our transportation system in every way possible. At the same time, we must insure that America's transportation system emerges from this transformation even stronger and more efficient than before. Actions that the Secretary, the Administration, and Congress have taken in the last few weeks demonstrate that DOT's mission must include protecting against vulnerability in the transportation system and seeking to assure the security of every transportation customer.

At the same time we must continue to focus on critical transportation issues, which have, perhaps, somewhat receded from public attention in the past three months. Secretary Mineta has often said that nothing has as great an impact on economic development, patterns of growth and quality of life as transportation. We face an urgent need to ease congestion in all modes of transportation and to improve the connections between modes for people and goods. Our challenge will be to balance security and safety with efficiency and reliability. I am certain that, under Secretary Mineta's leadership, those goals will inform my work, as Assistant Secretary for Transportation Policy, if I am confirmed.

In the next two years Congress will take up DOT's surface and air program reauthorizations, as well as other critical bills affecting virtually all modes of transportation. I look forward to supporting President Bush and Secretary Mineta and to working with Members of Congress, in addressing these vital tasks and in helping to analyze and shape these policies.

In the years since I first assumed an executive position in the transportation field I have developed a passion for this field—a passion I am certain that many of you share. I think that we all recognize that the ultimate stakeholders in transportation are the citizens and businesses of America, who rely on the transportation sector to move people and goods safely and efficiently. If confirmed, I pledge my energy and commitment to meeting the critical challenges facing the nation's transportation system. I look forward to working with you in improving and protecting our nation's transportation system.

Thank you for the opportunity to appear before you today, as you consider my nomination to be Assistant Secretary of Transportation for Transportation Policy. I would be pleased to respond to any questions you may have.

#### A. BIOGRAPHICAL INFORMATION

1. Name: Emil Hiram Frankel.
2. Position to which nominated: Assistant Secretary for Transportation Policy, United States Department of Transportation.
3. Date of nomination: September 14, 2001.
4. Address: (Information not released to the public.) Office: Day, Berry & Howard LLP, One Canterbury Green Stamford, CT 06901.
5. Date and place of birth: May 9, 1940, Bridgeport, CT.
6. Marital status: Married to Kathryn Frankel (maiden name: Fletcher), November 24, 1968, in Washington, D.C.
7. Names and ages of children: None.
8. Education: Harvard Law School, Cambridge, MA, 1962–1965—LL.B., May 1965; Manchester University, Manchester, United Kingdom, 1961–1962—Fulbright Scholar, no degree; Wesleyan University, Middletown, CT, 1957–1961—B.A., May



1961; Andrew Warde High School, Fairfield, CT, 1956–1957—high school diploma, June 1957; Roger Ludlow High School, Fairfield, CT, 1953–1956—no degree/diploma.

9. Employment record: Of Counsel, Day, Berry & Howard LLP, Stamford, CT, 1995–Present; Fellow (part-time faculty), Schools of Forestry and Environmental Studies and of Management, Yale University, New Haven, CT, 1995–Present; Adjunct Professor, School of Civil and Environmental Engineering, University of Connecticut, Storrs, CT, 2000; Fellow, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 1995; Commissioner, Department of Transportation, State of Connecticut, Newington, CT, 1991–1995; President, E.H. Frankel Company, Inc., Bridgeport, CT, 1989–1991; Of Counsel, Cohen & Wolf, P.C., Bridgeport, CT, 1989–1991; Vice President, The Palmieri Company (formerly Victor Palmieri and Company Incorporated), Washington, DC, and Los Angeles, CA, 1985–1988; Partner, Cohen & Wolf, P. C., Stamford and Bridgeport, CT, 1982–1985; Division Vice President, Victor Palmieri and Company Incorporated, New York, NY, Greenwich, CT, and Washington, DC, 1975–1982; Visiting Lecturer, Yale University, New Haven, CT, 1972 and 1973; Associate, Wofsey, Rosen, Kweskin & Kuriansky, Stamford, CT, 1971–1975; Special Assistant to the Under Secretary, United States Department of Housing and Urban Development, Washington, DC, 1970–1971; Legislative Assistant to United States Senator Jacob K. Javits (New York), Washington, DC, 1967–1970; Special Assistant to the Chairman, Connecticut Republican State Committee, Hartford, CT, 1966; Associate, Day, Berry & Howard, Hartford, CT, 1965–1966; Assistant Counsel, Connecticut Constitutional Convention, Hartford, CT, 1965.

10. Government experience: Selectman, Town of Weston, CT, 1999–Present; Member, Board of Finance, Town of Weston, CT, 1989–1999 (Chairman for five years); Member, Conservation Commission, Town of Weston, CT, 1970s; Member, Charter Revision Commission, Town of Weston, CT, 1970s; Member, Governor's Council on Economic Competitiveness and Technology (Connecticut); Member, Public Infrastructure Subcouncil, United States Competitiveness Policy Council; Member, President Bush's Transition Team at the United States Department of Housing and Urban Development, 1988; Member, President Reagan's Transition Team at the United States Department of Housing and Urban Development, 1980; Member, Governor Meskill's Task Force on Housing (Connecticut), 1970s.

11. Business relationships: Trustee, Wesleyan University, Middletown, CT, 1981–1984 and 1985–1997 Trustee Emeritus, Wesleyan University, Middletown, CT, 1997–Present; See positions held (as officer, director, and/or trustee) of various non-profit organizations, as described in the answer to Question 12, below; Between 1995 and the present I provided consulting services to the following corporations, business organizations, and/or public agencies, all of which entities were clients of Day, Berry & Howard LLP, the law firm with which I have been associated since 1995: New York City Partnership and Chamber of Commerce; AMTRAK; Joint Program Office of the United States Department of Transportation (as a subcontractor of Parsons Brinckerhoff); Delaware Department of Transportation; Massachusetts Port Authority; Massachusetts Turnpike Authority and Massachusetts Highway Department (as a subcontractor of Commonwealth Capital Partners, Inc.); Massachusetts Bay Transportation Authority (as a subcontractor of Hamilton, Rabinowitz & Alschuler, Inc.); Connecticut Department of Transportation (as a subcontractor to Cambridge Systematics, Inc.); Connecticut Department of Economic and Community Development (as a subcontractor to Frasca & Associates); Williams Communications, Inc. (client of Day, Berry & Howard LLP); and Rock Acquisition LP (client of Day, Berry & Howard LLP). All of these consulting relationships have been terminated with the exception of the project for the Connecticut Department of Transportation (as a subcontractor of Cambridge Systematics, Inc.), and representation of Rock Acquisition, L.P., which work is on-going.

12. Memberships: Admitted to Connecticut Bar, 1965; Member, Connecticut Bar Association; Member, Stamford, CT, Regional Bar Association; Member, Congregation B'Nai Israel, Bridgeport, CT; Member, Weston, CT, Kiwanis Club and Director, Weston Kiwanis Foundation, Inc.; Director and former President, Intelligent Transportation Society of America, Connecticut Chapter; Director, Regional Plan Association (RPA), New York, NY, and Member of RPA's Connecticut Committee; Trustee, Connecticut Trust for Historic Preservation; Advisor, National Trust for Historic Preservation; Director, Surface Transportation Policy Project; Trustee, Merritt Parkway Conservancy (a charitable trust), and President and Director of Merritt Parkway Conservancy, Inc., a Connecticut non-profit corporation.

13. Political affiliations and activities: (a) Selectman, Town of Weston, CT, 1999–Present; Member, Board of Finance, Town of Weston, CT, 1989–1999 (Chairman for five years); Member, Connecticut State Republican Committee, 1979–1985. (b) Member, Weston, CT, Republican Town Committee, 2000–Present. (c) Christopher Shays

for Congress Committee: \$100.00 (September, 1994), \$135.00 (September and October, 1996), \$150.00 (May, 1997), \$250.00 (June and September, 1998), \$350.00 (May and October, 2000); Weston Connecticut Republican Town Committee: \$225.00 (September, 1991), \$25.00 (March, 1992), \$5000 (August, 1995), \$105.00 (September and October, 1996), \$100.00 (September, 1997), \$500.00 (July and November, 1999); Connecticut Republicans: \$150.00 (May, 1996), \$150.00 (March, 1997), \$150.00 (May, 1998), \$250.00 (March and April 1999), \$200.00 (May, 2000), \$200.00 (April, 2001); Weld for Senate: \$600.00 (May and October, 1996); Bayley Senate 1998: \$500.00 (March, 1998); Friends of John Rowland: \$500.00 (December, 1997), \$250.00 (May, 1998), \$500.00 (June, 2001); Republican Women's WISH List: \$50.00 (May, 1993), \$100.00 (March, 1999), \$400.00 (March and May, 2000); Nielson Congress 1998: \$100.00 (August, 1998), \$75.00 (February, 1998); Nielson for Congress: \$350.00 (August and September, 2000); Gov. George Bush Presidential Exploratory Committee: \$500.00 (June, 1999); Victory 2000 for Connecticut: \$500.00 (June, 2000).

14. Honors and awards: Honor Award, Conference Planning Committee for the Preserving the Historic Road in America; Management Fellow, School of Management, and Senior Fellow, School of Forestry and Environmental Studies, Yale University, New Haven, CT; Joint Fellow, Center for Business and Government and the Taubman Center for State and Local Government, John F. Kennedy School of Government, Harvard University, Cambridge, MA; Fulbright Scholar, United Kingdom; William Day Leonard Award, Wesleyan University, Middletown, CT.

15. Published writings: See attached.

16. Speeches: During the past five years I have frequently spoken to transportation groups and/or moderated panels before transportation organizations. These appearances have largely occurred in Connecticut or in other parts of the metropolitan New York City region. My remarks have been delivered from notes, and I have not prepared formal speeches for these occasions.

17. Selection: (a) Do you know why you were chosen for this nomination by the President? I assume that I was nominated for the position of Assistant Secretary for Transportation Policy because of my experience and record, as Commissioner of the Connecticut Department of Transportation, my involvement in, and leadership of, various national and regional organizations engaged in transportation issues (such as the American Association of State Highway and Transportation Officials and the I-95 Corridor Coalition), my continuing work in the transportation field, since I left my position in state government, as a teacher of transportation policy and public management at the college and graduate school levels, and my ability to reach out to the wide variety of stakeholder groups, related to the transportation sector, in all my positions over the last several years. (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? I have been deeply involved in transportation policy issues for more than ten years, as a public official (Commissioner of the Connecticut Department of Transportation from 1991 to 1995), as a professional, providing legal and consulting advice to public agencies and private organizations engaged in transportation services and infrastructure development, and as a teacher of transportation policy and public management at the college and graduate school levels.

#### B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. Please refer to the opinion letter of the Acting General Counsel.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Please refer to the opinion letter of the Acting General Counsel.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? Commissioner of the Connecticut Department of Transportation (ConnDOT) from February 1991 to January 1995—Except for consulting assignments for ConnDOT, no continuing relationships with this public agency. Consulting services were provided to the following clients through Day, Berry & Howard LLP between 1995 and Present: AMTRAK; Joint Program Office of the United States Department of Transportation, as a subcontractor to Parsons Brinckerhoff; Delaware Department of Transportation; Massachusetts Port Authority; Massachusetts Turnpike Authority; Massachusetts Highway Department; Massachusetts Bay Transportation Authority, as a subcontractor to Hamilton, Rabinowitz & Alschuler, Inc.; and ConnDOT, as a subcontractor to Cambridge Systematics, Inc. (CSI). As of this date, all of these professional assignments had been completed with the exception of the work for ConnDOT through CSI, which consulting assignment is on-going.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. During my tenure as Commissioner of the Connecticut Department of Transportation (ConnDOT) I frequently appeared before the Connecticut General Assembly with regard to legislation and public policies, pursuant to my official responsibilities. During that time I also spoke with Members of Congress (particularly members of the Connecticut Congressional Delegation) regarding consideration and enactment of the Intermodal Surface Transportation Efficiency Act (ISTEA) and other matters of federal legislation, regulation, and public policies which related to my official duties as Commissioner of ConnDOT.

Since 1995 I testified, as a private citizen and not on behalf of a client, before a committee of the Connecticut General Assembly, regarding transportation financing and the establishment of a Transportation Strategy Board for Connecticut. I have represented legal clients of Day, Berry & Howard LLP before, and in meetings with, ConnDOT, regarding various right-of-way and condemnation issues. As a consultant to the New York City Partnership and Chamber of Commerce, I was involved in developing strategies for, and providing advice regarding, the reauthorization of the federal surface transportation legislation in 1996 and 1997. In 1998 DBH provided lobbying services to SPX Corporation before the Connecticut General Assembly, regarding then-pending bills. For the purpose of that proposed legislation, I registered as a lobbyist with the Connecticut Ethics Commission. I am not currently registered as a lobbyist and have provided no other lobbying services on behalf of DBH clients from 1995 to the present.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Please refer to the opinion letter of the Acting General Counsel.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any federal, state, or other law enforcement authority for violation of any federal, state, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

#### E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes, to the best of my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes, to the best of my ability.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes, to the best of my ability.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. To the degree the position of Assistant Secretary for Transportation Policy is involved in the review of regulations issued by the Department, I will work with the Secretary, the Deputy Secretary, the General Counsel, and all of the modal administrations to insure that regulations meet the statutory intent of legislation enacted by Congress. Within the limits of the Administrative Procedure Act and consistent with my responsibilities and authority, as Assistant Secretary for Transportation Policy, I will exert my best efforts to keep Congress informed about the timetable and substance of proposed regulations. Moreover, Secretary Mineta has stated his commitment to making the rule-making process more accountable and efficient, an important objective of Members of Congress. I will work closely with the Secretary, the Deputy Secretary, and my colleagues at the Department of Transportation to achieve this important goal.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Department of Transportation's mission is to support safe and efficient transportation. The Department's core activities include direct assistance, as provided by law, regulatory oversight and enforcement, operational safety services, public education, and research.

The Department of Transportation's current Strategic Plan describes five objectives for the Department for the years 2000 to 2005: First, the Department will promote health and safety by reducing transportation-related injuries and deaths; second, the Department will improve mobility by delivering an accessible, affordable and reliable transportation system for people and goods; third, the Department will support economic growth; fourth, the Department will seek to enhance the human and natural environment; and, fifth, the Department will insure the security of the nation's transportation system.

While supporting these strategic objectives, if confirmed, I will work with Secretary Mineta, Deputy Secretary Jackson, and my colleagues in the modal administrations at the Department of Transportation to review these goals, to revise and enhance them, to the degree appropriate in light of changing circumstances, and to manage those operations and programs of the Department for which I might become responsible in support of these objectives.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

#### F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated. For more than ten years I have been deeply involved in transportation issues. This period includes my tenure, as Commissioner of the Connecticut Department of Transportation (ConnDOT) from 1991 to 1995, and, in the years since I left my state position, as a professional, providing consulting and legal services to a range of transportation-related agencies and private organizations, as a frequent speaker, panelist, and moderator on transportation issues, as a teacher of transportation policy and public management at Yale University and the University of Connecticut, and as a writer on transportation issues and the interface between transportation and economic development, environmental quality, and community renewal.

Connecticut is a heavily urbanized state, and ConnDOT is responsible for virtually all of the transportation services provided to the state's residents and businesses. As the chief executive officer of this consolidated agency, I was responsible for an annual budget of over \$1 billion and for the construction, rehabilitation, maintenance and management of a multi-modal transportation systems, including highways, bridges and arterial roads, bus and commuter rail services, and airports.

My consulting services have included advice on almost all elements of the transportation system—public transit, airports, highways, intelligent transportation systems (ITS), transportation management, and institutional reform.

Thus, I believe that the range of my engagement in transportation issues qualifies me for the position of Assistant Secretary for Transportation Policy.

2. Why do you wish to serve in the position for which you have been nominated? Since first assuming a role in the transportation sector over ten years ago, I have developed a passion for this field, a passion which grows out of an understanding of the effect which mobility and accessibility have on every aspect of our lives. Transportation plays a key role in the economy, in the environment, and in community life. With the leadership of the President and of Secretary Mineta I welcome the opportunity to contribute to the shaping of transportation policy at this time and to play a role in the development of transportation policy.

3. What goals have you established for your first two years in this position, if confirmed? Secretary Mineta has pointed out that nothing has as great an impact on economic development, patterns of growth, and quality of life as transportation. The mission of the Department of Transportation emphasizes safety and enhanced mobility. We face an urgent need to ease congestion in all modes of transportation and to improve the connections between modes both for people and for goods. In the next two years Congress will be considering reauthorization of the surface transportation legislation (TEA-21). I am confident that the Executive and Legislative branches will work together to build on the foundations of ISTEA and TEA-21 to assure adequate capital investment in our transportation system and to enhance the management of the existing system through technological innovation and institutional reform.

Engagement in these issues and participation in their solution are the key goals that I have established for my first two years, as Assistant Secretary for Transportation Policy, if confirmed.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? My management experience in the transportation field has largely been at the local, state and regional levels. Although I have extensive knowledge of national transportation issues, I have not had direct or continuing engagement in the management of such issues. It will be necessary that I develop the information and expert knowledge that I will need to contribute to the management and resolution of such national transportation issues and the experience to work constructively with Members of Congress in the consideration and implementation of transportation and transportation-related legislation.

5. Who are the stakeholders in the work of this agency? The ultimate stakeholders in the work of the Department of Transportation are the people and the businesses of America who rely on the nation's transportation system to move people and goods efficiently and safely. Public agency stakeholders are the Congress, state and local governments, regional and metropolitan area public authorities, and other transportation facility governing/managing agencies. In the private sector stakeholders include the workers and the companies (and the associations which represent them) who build, maintain and operate the nation's transportation system and facilities. Finally, stakeholders include all those who are engaged in, and concerned about, the impact of the nation's transportation system on economic growth and international competitiveness, community renewal, public health and quality of life, energy utilization, and technological innovation.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number five? Secretary Mineta has emphasized accessibility and accountability, as essential values of the Department of Transportation. Consistent with that commitment, I would listen to, and work with, the Department's various stakeholders, in the development and implementation of the agency's policies and in carrying out the responsibilities of the position to which I have been nominated, if confirmed.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? The Department of Transportation has a centralized budgetary office, led by the Assistant Secretary for Budget and Programs, who essentially serves as the Department's Chief Financial Officer. While the Assistant Secretary for Transportation Policy is not directly responsible for the operational management of the Department's major programs, to the extent appropriate to the responsibilities of this position, at the direction of the Secretary and Deputy Secretary, I would work closely with the Assistant Secretary for Budget and Programs, the Department's Inspector General,

and my senior colleagues at the Department, to assure the effective implementation of all Department programs. (b) What experience do you have in managing a large organization? As noted above, from 1991 to 1995 I served as the chief executive, officer of the Connecticut Department of Transportation (ConnDOT), a consolidated, multi-modal transportation agency with over 4,000 employees and an annual budget of over \$1 billion. Prior to my service at ConnDOT, for approximately ten years I served as a senior executive of The Palmieri Company (formerly; Victor Palmieri and Company), a nationally-known business reorganization firm. In my capacity as a Palmieri Company executive, I was responsible for the management and reorganization of large and complicated real estate assets and real estate-related companies.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. I support the Government Performance and Results Act. This legislation required the Department to establish measurable program targets, and it has helped the Department achieve a coherent vision. In my own experience as an executive in the public and private sectors, I have established goals for myself and for those under my supervision and have measured performance against those goals, as critical elements in improving operations. I would anticipate that I would use this experience in carrying out my management responsibilities at the Department of Transportation, if confirmed. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? The Congress has a right to expect the Department to meet its performance objectives. If it fails to do so, there should be an examination of the reasons for this failure. While managers should be empowered and enabled to carry out programs and should be encouraged to introduce innovations in program administration and implementation, poor performance must have consequences. These might include the elimination, privatization, downsizing or consolidating of departments and/or programs. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? If confirmed, I would be committed to the Department's strategic goals, and I would anticipate that I would be personally engaged in managing the Office of Transportation Policy to assure its performance to those objectives. I would be responsive to direction from the Secretary in establishing priorities.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? My management style might be described as "consensual," that is, I consult broadly with my colleagues, empower employees, and then make decisions, based on the information and opinions provided to me. Information is a critical element of my management style: I insist on being informed of all important programmatic and operational issues, and I believe in intervening in a matter before it has become a crisis, if possible. Once decisions have been made, I believe in delegating implementation to subordinates, but I expect to be kept informed of progress, and I hold employees accountable for their performance.

When I served as the chief executive officer of the Connecticut Department of Transportation (ConnDOT), I typically managed by "walking around": I visited every highway maintenance facility and every branch office of ConnDOT, and frequently toured the headquarters building. I sought to meet with all ConnDOT employees on a regular basis, and during these meetings, I asked for their opinions and suggestions, and answered their questions about our policies, programs, and strategic goals.

I am not aware of any employee complaints brought against me in any of my executive positions, in either the public or the private sectors.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. If confirmed to the position to which I have been nominated, I would anticipate working closely with all Members of Congress. Outside of an appearance before a Congressional Committee, in my official capacity as Commissioner of the Connecticut Department of Transportation (ConnDOT), in order to testify about implementation of ISTEA, and frequent consultations with members of the Connecticut Congressional Delegation about matters of federal transportation policy and programs during my tenure at ConnDOT, I have not had an extensive working relationship with the Congress. However, as Commissioner of ConnDOT, I appeared frequently before, and worked closely with, members of the Connecticut General Assembly. I am very accustomed to establishing close and cooperative working rela-

tionships with legislators, and I would expect to work in a similar way with Members of Congress. Certainly, it would be an important priority for me to work closely with Members of Congress and their staffs on a bi-partisan basis and to support the work of Congressional committees on all matters and issues that come before me in the position to which I have been nominated.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. The Inspector General is a critically important position at the Department of Transportation and provides statutorily protected independence in evaluating effectiveness and integrity in implementation of the Department's programs. I would anticipate a respectful and candid working relationship with the Inspector General, and I believe that my own performance, as an executive of the Department, can and will benefit from the analyses, reports and opinions of the Department's Inspector General.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. It is the responsibility of the Department of Transportation to administer and implement the duly enacted laws of the United States in a manner consistent with their language and intent. Continuing consultation with Congress and with relevant stakeholders can be critically important to insuring that the regulations promulgated by the Department are consistent with the laws passed by Congress, and broad public participation in the Department's rulemaking activity is also vital to this process.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. Safety and congestion are the critical needs facing the nation's transportation system, and it is likely that Congress will be considering a wide and varied range of legislative proposals to address these issues. As Secretary Mineta has noted, congestion affects virtually all elements of the transportation infrastructure, and, by impeding mobility and accessibility, congestion threatens America's competitiveness, economic growth and productivity, and quality of life. Both the Department's safety and congestion priorities require addressing the need for additional capacity (which is an issue of adequate capital investment) and improved operational management of transportation systems and facilities.

While I have not analyzed all the major policy and management issues facing the Department of Transportation, among the specific areas which Congress may well consider as legislative priorities are the following: Reauthorization of TEA-21 and AIR-21. While neither reauthorization will occur for a couple of years, both Congress and the Department will be studying implementation of existing laws and programs, and considering possible amendments and improvements to the current authorizing legislation; "Streamlining" of capacity-enhancing transportation infrastructure projects; The future of AMTRAK and the maintenance of a viable national system of intercity rail passenger services; The movement of goods both domestically and in advancing national goals in global free trade (including the implementation of NAFTA); The role of the transportation sector in meeting the nation's energy needs; Improved management of the nation's air and surface transportation systems through the continued deployment of the most advanced information technologies; and With Congress, the Secretary and my colleagues at the Department of Transportation, working to strengthen the Department's ability to manage important economic and regulatory decision-making.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation. I believe that discretionary funds should be allocated pursuant to a fair, fixed and understood set of criteria. Although one of the largest grant-making agencies in the federal government, the Department has a relatively small percentage of funds over which it has discretion. Moreover, Congress increasingly earmarks even these funds for specific projects. I will support, and will be guided by, national priorities established by Congress and articulated by the Secretary in the allocation of those funds available to the Department which are genuinely discretionary, and, as Assistant Secretary for Transportation Policy, I look forward to advising the Secretary, the Deputy Secretary, and my colleagues at the Department of Transportation in the development of such priorities.

I understand that the Department's Inspector General has studied discretionary programs and that the Committee has held hearings on this issue. If confirmed, I will review these reports and hearings, as soon as possible, and will personally study the effect of Congressional earmarking on the discretionary programs of FHWA, FTA, and FAA.

Senator BREAUX. Thank you both very much, gentlemen, for being with us, and thanks for your commitment to come back. I know Mr. Shane and Mr. Frankel, you are not doing this for the money. Obviously, it is a great sacrifice. I think good people for the right job is absolutely critical, and that means getting people with experience both in the private sector and in the public sector to serve.

I mean, I want people who know what they are doing. The fact that they were doing it in the private sector and are willing to come back at great sacrifice as far as I am concerned is something that is very positive, and not negative at all. I want the best people there, and we are glad you are coming back.

I want to also express the fact that I am the only Senator here should not be considered as a bad sign for either of you. You ought to consider it a good sign——

[Laughter.]

Senator BREAUX [continuing]. Because of the fact that if you all were controversial, or were less than supported by this Committee, every Senator would be here trying to tear you apart. The fact that I am doing this on behalf of the Chairman, by myself, indicates actually the strong support that you have from both sides of the Committee, so it should not be in any way seen as a slight, really as positive.

Mr. SHANE, we are going to confirm you very shortly for the position of Associate Deputy Secretary, and then I take it we are going to come back when we get the legislation from the White House to consider creating an Under Secretary for Policy. I am sure you have had discussions with Secretary Mineta about that. Can you tell me what the difference is going to be? Can we just talk about it all at one time?

Mr. SHANE. Thank you, Senator. The position of Associate Deputy Secretary has been in the Department for many years. It has more recently, sometime after it was originally created it was also given the additional title of Director of Intermodalism. There have been some superb incumbents in that position, but notwithstanding the quality of the people that have populated the job, for some reason it has not done the job that various Secretaries of Transportation have expected.

Secretary Mineta is of the view that what is lacking in the Office of the Secretary of Transportation is a single, coherent focus of policy development. He does not have that right now at the appropriate level.

Senator BREAUX. And that focus on policy development is across all different venues of transportation and not just aviation, but the big picture.

Mr. SHANE. Absolutely, Department-wide. For example, the position for which Mr. Frankel has been nominated is entitled, Assistant Secretary for Transportation Policy. It is a bit of a misnomer, because he has transportation policy except for aviation, or except for most of aviation.

Read Van Der Water, who has already been confirmed in the job of Assistant Secretary for Aviation and International Affairs, has aviation and a variety of other international transport issues, so



the transportation policy function right now is divided between two Assistant Secretaries.

Now, you might say, "OK, well then, if you want a single focus of transportation policy, why not combine those two jobs". The answer to that is, that was in fact the status quo, and the last job that I had in the Department was those two jobs combined, and I have to tell you as the last incumbent in that combined position, it did not work. It did not work because the line responsibilities that Assistant Secretaries have are such that for the most part the aviation and international side of the portfolio is simply overwhelmed. What I consider to be many of the core issues of the Department of Transportation which were there were given short shrift at the Assistant Secretary level.

I think Secretary Mineta came to the same conclusion, and it was therefore his view that by elevating this coordination function, this policy development function to a notch above the Assistant Secretaries, the Associate Deputy Secretaries—not above, it is actually below. If you ratcheted it up above the Assistant Secretaries, and you have that single focus, the incumbent in that Under Secretary position will have the luxury of not having to deal with regulatory issues every day of the week, the way Ms. Van Der Water will have to do as Assistant Secretary for Aviation, programmatic issues that Mr. Frankel will have to deal with if he is confirmed, and so forth, and so I honestly believe that we can really give life to this concept.

What excites me most about it, if I can just add one final thought, is that we have been talking about one DOT for as many administrations as I can remember. I have never seen that concept actually take hold. I think just by virtue of having been there as many times and as many years as I have, I have some ideas about how that can be done. I have discussed those with the Secretary as recently as a couple of days ago. I am really quite confident that we can make the Department of Transportation function in a way that it was meant to function in the Department of Transportation Act of 1966, and this Committee and other Committees of the Congress will be the beneficiaries of that more coherent policymaking operation.

Senator BREAUX. Let me hope that when you leave this position you will be able to look back and say, it was a better place than when I got there. I think that is really a challenge.

Let me talk a little bit about the concept, since it is a policy decision that you are in. There are many of us who are big believers in the free market and competition. It has become increasingly, and perhaps now because of the economics of the situation we are in, more and more concerned that in order to have competition and free markets, you have to have competitors, that you cannot have competition without competitors, and more and more it seems to me that more and more we have less and less.

More and more we have fewer railroads, more and more we have fewer oil companies, more and more we have fewer airlines, more and more we have fewer and fewer telephone companies, and it is sort of something that is permeating throughout society.

There is a great deal of activity and consolidation and mergers and what-have-you, and if we end up with two railroads in this

country, or two airlines in this country, how are we going to have real competition, and if you do not have competition, the alternative is, government regulates. If we only have one railroad, we are going to regulate where they go, what they charge, and who they serve. The same thing with airlines. The same thing with, you name the industry, and so competition is an essential ingredient, and you must have competitors in order to have competition.

Can you just give me some of your philosophy about the things that are happening out there, and what your recommendations might be?

Mr. SHANE. Yes. Well, first of all, the one thing I would say in response to your statement is, Amen. I share that concern. I think there are some worrisome developments in a variety of modes of transportation that do bear close watching. I was pleased to see the Surface Transportation Board put a moratorium on mergers in rail in order to take a good, hard look at what is really happening in the rail sector.

The aviation sector is, I think, complicated right now. Obviously the airline industry is in the tank for all the reasons that we know even prior to 9/11 and certainly subsequent to that. The Congress has jumped in very quickly, and I must say very adroitly, in order to stave off what could have been a real catastrophe in the air transport sector, but I can tell you that from my experience in the private sector over the past 8 years, and particularly in the past couple of years, I would not write off the prospects for new entry in the airline industry.

I am not here to make any promises, but there are some very interesting developments out there right now. Venture capitalists are beginning to look very hard at some models that have really worked, I think, for a long time. I used to come in past incarnations at the Department of Transportation and testify about how much competition we had in the airline industry, and I will always cite Southwest Airlines. Southwest Airlines was a savior of executive branch policymakers in the aviation field, because it was bringing some competition to a market that otherwise might have been too concentrated in some places.

Now you are beginning to see replications of the Southwest experience coming in different forms, but a whole variety of data points I would say that investment bankers look for when they advise possible new entrants as to whether this is a business to get into, and so I am naturally encouraged. It is a little hard to see it through the fog of this awful environment we are living in right now, but I am encouraged about the prospects for new entrants into the airline industry, and I would not jump to any conclusions about what the federal government needed to do beyond that which it is proposing to do, which it is doing now pursuant to the airline stabilization legislation that was just passed.

When we began the first Bush administration, we did a comprehensive study of competition in the domestic aviation industry. I do not think there has been as comprehensive a study of competition in that industry since, and it may well be that if, depending upon developments—I mean, we have not formed any judgment right now as to whether we are about to do another study, but depending upon developments there might well be a basis for going

back in and replicating that study, seeing what the data showed today, similarly in shipping.

I think that competition, as you say, is critical to our economic well-being and the Department of Transportation, working with the Department of Justice, has a solemn obligation to ensure that we continue to enjoy the benefits of it.

Senator BREAU. I know that, and thank you.

Mr. Frankel, your areas are going to deal with some of the regulatory issues, as I understand it, is that correct?

Mr. FRANKEL. Principally, Mr. Chairman, in the surface transportation area.

Senator BREAU. Let us talk about the trucking industry, and the carrying of hazardous waste. We have been in this area of trying to make sure that people who drive trucks that carry hazardous materials are qualified in order to do that, and Congress has been involved in the Patriot Act and requiring background checks to be performed on all commercial drivers, and there is a debate about who is going to do that, whether the industry is going to do it, or whether the government is going to do it, or whether we are going to have a combination of some form to be able to do it.

I suggested, maybe naively, but it seems like it made a lot of sense, that we now require background checks for the purchase of firearms in this country, and we get those background checks done in 24 hours so somebody can buy or not buy a hand gun, which I imagine is done through some type of a computer system. I am just wondering, why can we not use that same type of computer information on people who have criminal records, and extract that information for the purpose of determining whether they should have a commercial license to be able to transport hazardous material.

Can you give me your thinking, and what your recommendations would be on how we are going to resolve the question on how we can as quickly and fairly as we can get criminal background checks on people that are applying for these licenses?

Mr. FRANKEL. Well, I know, Senator, that this has been an area to which Congress and this Committee in particular has turned its attention with great urgency, particularly since September 11. Of course, the question of hazardous waste—hazardous materials, excuse me, movements is something which has several different parts, as you all know. The operating agencies, the operating administrations in the Department are involved, and indeed, the policy office, the Office of Intermodalism, has been involved in trying for the last 2 years in trying to coordinate this effort to deal with what public policy and national policy should be with regard to the movement of hazardous materials, the licensing.

I think we have taken some important first steps with the Patriot Act. I know that this Committee, Senator Hollings, yourself and your colleagues have also taken the initiative in trying to clarify and make clearer the implementation of that act.

Senator BREAU. Well, I take it on that point that the administration is now of the opinion that that act is not necessary. Is that your understanding of what you are hearing down there?

Mr. FRANKEL. I cannot really speak to that, Mr. Chairman with specificity. I do know that the Secretary certainly is committed to

the implementation and the clarification of the terms and requirements of the Patriot Act with regard to the licensing of those who would move hazardous materials.

Senator BREAU. We had some technical corrections which I think they are saying it is not really necessary now, that I think some of us felt that it would be helpful to have it spelled out in legislation, and you need to take a look to see. We are not trying to pass legislation just to pass it, but I think if it is needed, and it is necessary, we want you all to take a look at it.

Mr. FRANKEL. We will do that, sir.

Senator BREAU. You would have railroads under your jurisdiction?

Mr. FRANKEL. Yes, in terms of policy, and obviously, in working with the Secretary and the Deputy Secretary, and hope-to-be Under Secretary in FRA. We have major fundamental issues, obviously, before us with regard to railroads.

Senator BREAU. I was pleased to see that Mr. Shane supports no more rail mergers at the present time. I think that is correct. Can either of you give some indication of what we can do as an administration and as a Congress concerning the financial status of Amtrak? It is almost a regional issue, and yet it really is not.

We have got the legislation requiring that they liquidate if they do not operate in the black. That is not going to happen. I mean, what do we need to do to assure the traveling public who uses rail transportation as a means of moving around the country that we are going to invest in this system?

I mean, if you look at what—and we always hear the stories about what Japan and what Europe has done to emphasize rail as a transportation of people. The systems are generally much better supported, and there is a lot reasons, because of geography and the size of the countries, of course, but I hesitate to think what would happen to the Northeast Corridor with aviation if we did not have Amtrak. I mean, we would have an overload of those airports, and we would never be able to move.

I support it, but what can you tell the Congress, and perhaps in general right now, that we need to be doing to reassure this country that we are going to have an Amtrak system that is going to be available?

Mr. FRANKEL. Well, Mr. Chairman, I have obviously dealt with Amtrak a good deal as Commissioner of a state in the Northeast through which Amtrak passes, indeed, one of the few states that actually owns a significant portion of the right-of-way which Amtrak uses. I became quite familiar with both the opportunities, the possibilities, the importance of intercity passenger rail, and also what some of the obstacles and burdens are.

There are obviously—you know better than anyone that there are no easy answers here. If we had them, I am sure we would have a more clearly financially appropriate program. From the beginning, Amtrak has obviously had two oftentimes conflicting missions, that is, to be financially viable, if not profitable, as well as to run, maintain, operate a national passenger service.

I think in the crisis that we have, including the events, as you said, Mr. Chairman, of September 11, and the aftermath, and recognizing the importance of inner city passenger rail in crowded cor-

ridors, including, but not limited to the Northeast Corridor, and now the statement, the finding, if you will, by the ARC of dealing with the financial viability of Amtrak, I think this is a moment of opportunity.

You all have Amtrak reauthorization to deal with next year. The Secretary and the Department are committed to working with the Congress early in the next year in trying to develop some fundamental solutions to the provision of intercity passenger rail. I think the one thing that I have noticed is, it may not be unanimous, but I think there is a broad common interest and commitment to viable, effective, efficient intercity passenger rail, and now I think we have to together deal with the fundamentals of that.

Senator BREAUX. Mr. Shane, as a policy forecaster, perhaps, in the Department can you share some thoughts on that? I guess I have the conclusion that we ought to quit trying to make Amtrak operate at a profit. Make them operate efficiently, but recognize that a transportation system in crowded corridors using the rail is in the national interest, and we are going to have to quit worrying about whether it can only exist if it makes a profit.

I think it is in the national interest to have that there, because it also helps other sectors, other transportation sectors immensely. What are your thoughts? Is this something we need to do in the national interest? Do we have to recognize we are going to have to spend some money on it, or do we take the position that if they cannot make it, we will shut them down?

There are some Members of Congress who say, look, you have got so many passengers. If your trains are running full, we will operate at a profit, and if you cannot operate at a profit, we do not need you, or you should not be there. What are your thoughts on that?

Mr. SHANE. Senator, I would be fooling myself and anybody else if I sat here and pretended that I had the right answer to the Amtrak dilemma. I think I actually have the somewhat dubious distinction of having been a lawyer on the little task force that was set up in the early seventies to create Amtrak, and so I have a long history with Amtrak, none of which I can take any real credit for.

The fact is that Amtrak does not seem to be viable in its current form. Just throwing money in the kinds of amounts that we are used to seeing at Amtrak will not make it more viable. It will have to be in order to proceed on that basis a sea change in the administration's and the Congress' attitude toward Amtrak, and it is hard for me to see that that is going to be the solution, so I look at the issue as the issue of intercity rail transportation generally. What are we going to do to assure we have a viable intercity rail transportation system in this country?

I do not know whether Amtrak is a solution to that. I do know it is an issue that we cannot not face up to very seriously in the next few months. I am hoping that because of the crisis which has been created by the ARC decision, we are all waiting for the plan that will emerge, I guess, in 90 days from November 9, I think it was. As a result of that, our minds are going to be concentrated wonderfully on what we are going to do about rail transport in this country. You are absolutely right, it cannot be sort of written off. It is an essential component of our transportation system, and all I can tell you is that I commit myself, and I know Mr. Frankel

commits himself to making sure that we address it with all available energy and creativity.

I do not know whether Amtrak will be part of the solution when we finally find the solution. If we could address this issue successfully, Mr. Chairman, I think it would probably be the most important thing we did in the transport sector in years.

Senator BREAU. I am not trying to pin you down, but maybe if you could elaborate, I mean, just from a philosophy type of standpoint, do you think that Amtrak should only exist if it could make its way financially, or would you be put into the category that, let us say it is in the national interest, and you are going to have a financial commitment of some sort to assist it to provide the service?

Mr. SHANE. Well, the country, I mean, by default has pretty much taken the view that it is in the national interest, and we continue to finance it, notwithstanding the fact that it is not and has not been ever financially viable, so in that sense there is sort of a policy in place right now, but it is a policy by default.

I honestly do not know—after looking at the numbers, and I cannot pretend to have studied Amtrak nearly as much as a lot of other people have, so I really do not want to pretend to be an expert on the subject. I do not know if, after I have taken a look at all of that, I would conclude that we should simply treat Amtrak as something that we should subsidize forever and continue to operate in the way that it has been operated.

Senator BREAU. I should know, but I do not think I do, but I would imagine that other countries that have successful rail transportation systems, they are probably not money-making operations, whether it is in Europe or in Asia or Japan. I would imagine that those countries have a financial commitment to keep those passenger transportation systems in place of some sort.

Mr. SHANE. That is right. They have taken a very different policy decision, I think, with respect to rail transport, and by and large we are talking about countries that have different population densities, different demographics than much of our country, and so it is difficult to say whether comparisons with Europe, for example, or with Japan are apposite in trying to address the Amtrak problem, but those are the kinds of questions we really do need to address.

I am not trying to be cute. Please understand, I think this is one of the most serious transportation policy issues that is confronting the Department of Transportation right now.

Senator BREAU. It is not an easy answer. If you make the decision that a rail transportation system is in the national interest and it cannot make a go of it financially so we are going to have to assist it and subsidize it, could you not say the same thing for the aviation industry?

I mean, there is not an airline out there right now, but maybe one, that is probably showing a profit, so eventually, when you do not show a profit, you cease to exist in a free market. Therefore, an aviation system is in our national interest, so we are going to subsidize passengers on all of the airlines to make sure they do not go away, and then you can extrapolate that to everything that you

think is in the national interest and move away from a free market society. It is not an easy question.

Well, I think if we do have some additional questions to both of you gentlemen, I think we will submit them and ask that you respond. After that is completed, I would hope the Chairman would try to process this out of the Committee as quickly as possible and hope we can get it done perhaps before we leave, because the question is, nobody knows when we are going to leave. We may have a lot of time.

[Laughter.]

Senator BREAU. Mr. Frankel, I hope you got rid of that Enron stock.

[Laughter.]

Mr. FRANKEL. Too late, Mr. Chairman.

[Laughter.]

Senator BREAU. Well, we appreciate both of you spending time with us. I think you are uniquely qualified, and thank you for agreeing to serve, and with that, the hearing will be adjourned.

[Whereupon, at 3:25 p.m., the hearing adjourned.]





## APPENDIX

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS  
TO JEFFREY SHANE

*Question 1.* The Committee will act on your nomination to become the Associate Deputy Secretary. I know that we will attempt to create a new position for you, an Under Secretary for Policy and that we will need to go through an abbreviated process to confirm you for that position at a later time. You have already served as the Assistant Secretary for Policy at the Department and thus have much experience with how DOT functions. Can you explain, for the record, your view of how the new position will function and the benefits?

Answer. Because the old position of Assistant Secretary for Policy and International Affairs was split into two new positions in 1993, surface and intermodal issues now enjoy the undivided attention of one assistant secretary while another assistant secretary is devoted full-time to aviation and other international issues.

This change produced important improvements over the previous structure, which had become unwieldy and ineffective. Still, the day-to-day regulatory, administrative, and project-specific decisions that have to be addressed at the assistant secretary level leave little time for the forward-looking, intermodal policy development process that Congress foresaw when it wrote the Department of Transportation Act in 1966, and that Secretary Mineta wants to achieve through his proposed reorganization.

As contemplated in Secretary Mineta's proposal, a new Under Secretary for Policy would have Department-wide scope and serve as the Secretary's principal policy advisor. The Under Secretary would serve as the main focal point for formulating new initiatives, developing the Department's views on pending program reauthorizations and other key legislative proposals, advising the Secretary on major regulatory and policy decisions, and brokering an on-going policy development effort that draws continually and cooperatively on the Department's operating administrations.

The Secretary's proposal would not do any violence to the Department's structure. The Assistant Secretaries for Transportation and for Aviation and International Affairs would remain in place, reporting to the Under Secretary. Also, because the present position of Associate Deputy Secretary would be abolished upon the creation of the new Under Secretary position, the proposed restructuring would not expand the Office of the Secretary. Rather, the change would facilitate a drawing together of the Department's vast resources in a way that will enable us—in close cooperation with the Congress—to develop and manage a truly creative, forward-looking, and integrated responses to our nation's transportation requirements. It is a structure, we believe, that will enhance the Department's ability to do business with its authorizing and appropriating committees, and vice versa.

### AVIATION

*Question 1.* With the faltering economy and the events of 9–11, the airline industry is facing an enormous challenge. DOT will be confronted with a different industry in 6 months—perhaps with less airlines, less low cost air carriers, and thousands unemployed. What concerns do you have if we do see failures or consolidations, leaving us with less participants in the market?

Answer. The terrorist attacks of September 11th had a profound effect on the financial position of the airline industry. DOT has disbursed nearly \$4 billion of the \$5 billion in compensation to airlines made available by the Air Transportation Safety and System Stabilization Act. In addition, America West was granted a loan guarantee in accordance with procedures established by the Act. Anecdotal evidence suggests that quick action under the Stabilization Act has had the intended effect of stabilizing the industry and restoring the confidence of the financial markets in the airline industry.

Although the future of the industry is still precarious, the financial condition of most carriers is improving. It seems premature, therefore, to speculate that the terrorist attacks have forever changed the fundamental structure of the airline industry.

try. The spirit behind the Air Transportation Safety, and System Stabilization Act was and is exactly right: to preserve the existing competitive structure in the airline industry by compensating airlines for their incremental losses due to the terrorist attacks, and to allow the market to seek its own equilibrium thereafter.

The Department will continue to monitor developments in the airline industry closely. Our primary goal must be to continue to work toward the stabilization of the industry and thereby to preserve competition. We remain committed to ensuring an environment that promotes competition and provides consumers with the price and service benefits that competition brings.

*Question 2.* The House has introduced legislation to provide direct support and loan guarantees for general aviation. Does the Administration support this legislation?

Answer. The Administration has not yet taken a position on H.R. 3347 (or on a similar bill introduced in the Senate, S. 1552). The general aviation industry is a critical element of the U.S. aviation sector, and it is important to focus on the prospects for a revival in this sector of the economy. As you know, the President has just transmitted his FY2003 Budget Request. It represents a comprehensive and balanced approach to reviving the economy and addressing the consequences of the attacks of September 11. I would expect that the Administration's position on this bill, and other bills that take an industry-by-industry approach to these questions, will be developed as a part of the overall budgetary and appropriations process in this session of Congress.

*Question 3.* DOT has been asked repeatedly to review and revise its CRS rules governing travel distribution. The world of travel distribution has changed substantially since the rules were last revised. Carriers have cut fees to travel agents, new companies have been created to provide services, companies once subject to the rules may no longer fall under the rules, and yet the rules remain unchanged. When can we expect that DOT will revise its CRS rules?

Answer. The Secretary fully recognizes the importance of completing the CRS rulemaking. He has instructed the staff to move forward on the rulemaking and develop a rulemaking proposal that can be forwarded to OMB. We expect the Department to submit a proposal to OMB within a few months. I intend to ensure that the staff promptly carries out the Secretary's directions.

*Question 4.* The Committee favorably reported S. 415, legislation designed to provide an ability for carriers to enter fortress hubs. While the downturn and 9-11 have changed much, what are your views on how best to ensure that we have competitive access to major airports around the country?

Answer. To increase airline competition, we should seek to reduce anticompetitive barriers to entry—barriers that either prevent or make it more difficult or costly for air carriers to enter a market or expand operations once they begin serving a community.

Airport managers, as outlined in an October 1999 DOT study (Airport Business Practices and Their Impact on Airline Competition), have a legal obligation to ensure that all air carriers have reasonable access to essential airport facilities. Under AIR-21, certain large- and medium-hub airports—those airports served primarily by one or two dominant carriers—must submit to DOT airport competition plans in order for the FAA to approve the collection of a new Passenger Facility Charge (PFC) or for a grant to be issued under the Airport Improvement Program (AIP).

A competition plan must include information on the availability of airport gates and related facilities, leasing and subleasing arrangements, gate-use requirements, patterns of air service, gate assignment policy financial constraints, airport controls over air- and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels (as compiled by DOT) compared to other large airports.

I understand that FAA and OST staff devoted a considerable amount of time to reviewing fiscal year 2001 airport competition plans and offered suggestions for what actions airport officials could take to reduce entry barriers. The ongoing review of fiscal year 2002 plans is focusing on actions taken in response to these suggestions, particularly as they relate to gate utilization and monitoring, subleasing practices and notification to all carriers of gate availability and gate assignment policies. Clearly, a careful review of airport competition plans is and should remain an important policy tool for increasing airline competition.

*Question 5.* I know that you have been extremely involved in the security issues, and I will not ask you to divulge classified information or go into details about implementation of the Aviation and Transportation Security Act. How quickly do you anticipate that the President will nominate the Under Secretary for Security? With respect to National Airport, the press reported that the Secretary would be spending

\$2 million for additional security measures. Can you generally explain how the money will be expended?

Answer. The \$2 million dollars have been allocated for a demonstration project to investigate technology for 100 percent positive passenger bag matching at Reagan Washington National Airport. New technology concepts, such as automated barcodes, radio-frequency (RF) tags, and other baggage reconciliation procedures will be evaluated and selected based on effectiveness and availability. Separately, I know that the Secretary is gratified by the speed with which your Committee and the Senate has acted to confirm John Magaw as the Under Secretary of Transportation for Security.

#### SECURITY

*Question 1.* Security in the transportation system is only as strong as its weakest link. If we focus all of our resources on the security of the aviation system but neglect the other modes of transportation are we doing a disservice to the American public?

Clearly there are a number of vulnerabilities throughout the transportation system. Although the highways are publicly owned, there is virtually no security on the highways, other than the enforcement of highway laws. There is very little security on either the freight or passenger rail systems or throughout the vast maritime system. While the Commerce Committee has approved legislation addressing both maritime and rail security, it concerns me that there are generally no recognized standards and very little attention is being focused on security modes other than aviation. Can you discuss what you will do to bring these issues in the greater focus at the Department and within the Administration?

Answer. The Department believes the security of the entire transportation system is of paramount importance. While the aviation system has received much of the public's attention, the Administration, the Secretary and the Department have been looking at the security of our transportation facilities in a more comprehensive way.

Immediately following the September 11th attacks, the Secretary—concerned about the very issues mentioned in your question—established the National Infrastructure Security Committee (NISC) to evaluate security issues and recommendations in all surface modes of transportation. Six “Direct Action Groups” (DAGs) were formed under the NISC to consider transportation security matters related specifically to particular security issues as they arise in particular modes of transportation (maritime, motor carrier, pipeline, railroad, transit, and hazardous materials transportation). The DAGs are comprised of personnel from Office of the Secretary of Transportation and from the Department's various modal administrations.

The Department has also created: A Transportation Information Operations Center—a “24/7” communications facility, to be fully operational by April 1, 2002, that will improve the flow of information between the Department and the transportation industry; A Credentialing Direct Action Group—exploring the “smart” credentialing of all transportation workers and persons with access to secure transportation facilities; A Container Working Group—an interagency working group that includes the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Transportation, and the Treasury. The group is tasked with improving the security of containers that flow through the nation's intermodal transportation system.

Representatives from across the transportation industry have been meeting with the DAGs on a regular basis. In turn, the DAGs have been working aggressively to (i) identify shortcomings in current security measures, (ii) formulate recommendations (including suggested legislative and regulatory changes), (iii) establish standards, and (iv) engender more effective company and government security preparedness.

As one early product of this effort, the DAG on maritime transportation prepared recommendations and technical assistance for the Department's position on the “Port Maritime and Rail Security Act of 2001” (S. 1214).

#### RAIL

*Question 1.* Does the Administration intend to submit rail safety legislation next year?

Answer. I am told the Administration does expect to submit a rail safety reauthorization bill to Congress for its consideration this session.

#### AMTRAK

*Question 1.* There is major concern over the current financial state of Amtrak given the recent finding of the Amtrak Reform Council which has required Amtrak

to prepare a plan detailing their own liquidation. While it is generally agreed that Amtrak will not be liquidated, the current process has created a great deal of uncertainty within the financial markets. What is the Administration doing to reassure Amtrak, their creditors and passengers that Amtrak service will continue uninterrupted at this time?

It has been said recently that the Administration plans to send up reauthorization plans for Amtrak early next year. Can you please comment on the successes and the failures of the current passenger railroad system and any changes that you think might create a more stable, better funded system which can serve a larger number of passengers?

Answer. I strongly believe that the Administration and the Congress need to work together sooner rather than later to craft a consensus on the national policy toward intercity rail passenger service. While the spotlight is on Amtrak's financial challenges, we must not lose sight of the fact that this is a transportation mode that has the potential to play a much more important role in providing the intercity passenger mobility that this nation needs. I have no doubt that Amtrak will be kept up and running while the debate over this policy takes place and through any transition to a new paradigm of for intercity rail passenger service.

With regard to Amtrak's experience to date, the success that is most readily apparent to all is the important role Amtrak plays in the Northeast Corridor transportation market, where it carries a majority of the combined air/rail market between Washington and New York City and a growing percentage between New York City and Boston. The less obvious successes have been the way intercity rail passenger service has been embraced by several states as major components of their transportation plans and how these states have financially supported intercity passenger rail service even in the absence of a strong federal partner.

I believe that the two essential prerequisites to a more stable and reliable passenger rail system are (1) a clearly stated federal policy with regard to passenger rail service, and (2) a much larger role for the states.

#### MARITIME

*Question 1.* President Bush has expressed strong support for the Jones Act, support that has been reiterated by Secretary Mineta and other members of the Administration. Do you support the President's position on maritime cabotage?

Answer. Yes. The maritime cabotage restriction has been an element of U.S. transportation policy for many years, and I am well aware of the President's support for it.

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO EMIL FRANKEL

#### TRUCKING

*Question 1.* As you know, the issue of Mexican trucks operating beyond the commercial zones on the U.S.-Mexican border has been the focus of a lot of attention in recent months. While I am pleased that the appropriators reached a compromise on this issue, I have concerns about the lack of coordination on this issue and the amount of information available about Mexican trucks. Can you please discuss the state of readiness on both sides of the border and when you believe the border can be opened to cross border traffic?

How will the requirements contained in the fiscal year 2002 Transportation Appropriations bill be complied with?

Answer. The fiscal year 2002 DOT Appropriations Act established a variety of requirements for the Department to meet prior to opening the southern border to meet prior to opening the USMexican border, consistent with the requirements of the NAFTA.

The Department and the four southern border states are working cooperatively to implement the provisions contained in the Appropriations Act. These include the placement of vehicle weighing scales at each crossing; placing ten Weigh in Motion scales at the ten busiest crossings; deploying 214 additional federal enforcement personnel at the border; providing \$18 million for additional state border enforcement personnel; establishing permanent inspection stations at major crossings; and issuing comprehensive safety rules to assess the safety of Mexican carriers before they are allowed to operate in the United States.

The Mexican government has made great progress in improving their safety information management systems, including developing a drivers license data base with some 88,000 drivers to date and establishing a carrier based system with some

100,000 carriers operating 500,000 vehicles. In addition, Mexico is conducting vehicle and driver inspections. The US and Mexico have agreed to provide access to these data bases by U.S. and state inspectors.

High-level delegations from both countries are meeting on a regular basis to discuss issues, exchange information and solve issues cooperatively to assure the attainment and maintenance of the highest levels of operational safety in cross-border operations.

*Question 2.* The USA PATRIOT Act of 2001 required background checks to be performed on all drivers of commercial vehicles carrying hazardous materials. S. 1750, which I introduced last week along with other members of the Commerce Committee, provided technical corrections to section 1012 of the USA PATRIOT Act following extensive consultations with the DOT. I understand that within the last week, the Department has reached the conclusion that a legislative fix is not necessary. Can you please discuss why it would not be helpful for the Congress to approve S. 1750 providing the technical corrections that DOT previously requested?

Answer. We understand that the Department is developing an interim final rule to implement section 1012 of the USA Patriot Act. The rule in development will be comprehensive and not only implement Section 1012 but also address the clarifying requirements, as proposed in S. 1750. We look forward to working with the Committee in ensuring that all necessary steps are taken, by legislation and/or by rule-making, to ensure that the purposes of the Act are carried out.

#### PIPELINES

*Question 1.* The Senate has approved pipeline safety reauthorization legislation in each of the last 2 years. This bipartisan legislation has been passed overwhelmingly by the Senate and has included the input of the Administration in addition to other interested parties. The House has not acted on any pipeline safety legislation even though there have been much publicized accidents resulting in multiple fatalities in both the liquid and the gas industries in recent years. How will you work to advance pipeline safety priorities either through the legislative process or the regulatory process?

Answer. I understand the Administration is fully committed to passage of pipeline safety legislation and if confirmed, I would hope to make that a high priority for my office. In addition to supporting the pending legislation, the Department had made considerable progress in addressing issues of pipeline safety, and remains committed to continuing its efforts in that regard. The Department's actions include the following: We have now begun inspections to enforce hazardous liquid pipeline integrity management rules; In January 2002, the Department issued a notice of proposed rulemaking to define the areas where gas integrity management will apply; During 2001, the Department improved its accident reporting requirements for hazardous liquid and gas transmission pipelines. The Department lowered the reporting threshold for spills from 50 barrels to 5 gallons; In December 2001, the Department issued a final rule updating corrosion control requirements for hazardous liquid pipelines; The Department's Research and Special Programs Administration is working with states to enforce more comprehensive requirements to assure that pipeline employees performing safety duties are qualified; The Department improved its pipeline safety enforcement program, to commit more resources to this effort; There are new guidelines for state participation in interstate pipelines oversight; There is a new comprehensive multi-year plan for research and development of pipeline safety technologies. This was developed in connection with the Departments of Energy and Interior.

#### RAILROADS

*Question 1.* Railroad safety programs expired in 1998 and reauthorization of these important programs is long overdue. What are the major safety concerns facing freight and passenger rail?

Answer. Highway-rail grade crossing collisions and accidents involving trespassers and pedestrians along railroad rights-of-way account for 95 percent of all railroad-related fatalities. Grade crossing safety and trespasser prevention programs remain essential to the Federal Railroad Administration's (FRA) rail safety program. Track problems have recently become the leading cause of train accidents, accounting for more than one-third of all such accidents. Railroads have scaled back investment in track rehabilitation, and axle loadings have increased as the rail industry continues to introduce heavier freight cars. The result is accelerated deterioration of the track structure. FRA is intensifying its track inspection program to drive down track-caused accidents. Human factors are also a significant cause of train accidents, accounting for slightly less than one-third of total train accidents.

FRA is promoting improved training of railroad workers, the adoption of fatigue mitigation programs, and increased safety oversight by railroad managers as necessary steps to reduce human factor caused accidents.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN  
TO EMIL FRANKEL

SURFACE/MERCHANT MARINE

*Question 1a.* As you may be aware, last month the Amtrak Reform Council (ARC) voted 6:5 making a “finding” that Amtrak will not meet its statutory requirement of operational self-sufficiency by next year’s deadline (December 2, 2003). Have you had an opportunity to review Amtrak’s financial and operating performance?

Answer. While I have not reviewed Amtrak’s financial and operating results in detail, I am, of course, aware of the very difficult financial circumstances, which the company faces. Costs have increased, and are continuing to increase, more rapidly than revenues, and the capital needs of Amtrak are significant.

*Question 1b.* Given the Secretary’s membership role on both the ARC and the Amtrak Reform Board, does the Administration intend to submit a rail passenger restructuring proposal or some type of proposal to address Amtrak’s severe financial situation, and if so, when?

Answer. It is my understanding that the Department of Transportation is working to develop a comprehensive policy and set of recommendations, relating to the future of inter-city passenger rail. The Secretary’s goal, I believe, is to have these policy proposals ready for submission to Congress early next year, when the President presents his FY 2003 budget. If confirmed, I hope to be involved in the development of this policy, and I look forward to working with Congress in shaping a legislative package, which will address these issues.

*Question 2.* Earlier this week, the Senate approved, without my support, H.R. 2299, the DOT Appropriations Bill for fiscal year 2002. That bill was an egregious overreach by the Appropriators in redirecting the programmatic expenditures and directives under the laws developed by the Authorizing Committees. There were more than \$4.1 billion in earmarked projects (\$1.2 billion in the conference report and \$2.9 billion in the statement of managers). It went so far as to redirect nearly \$1 billion in highway dollars that should have gone out by formula to the states or allocated to the highway programs and the money was used as a slush fund to earmark the Appropriators’ home-state projects. I want to ensure that each of you fully understands the difference in the legal effect between report language and bill language. Do you understand that report language is advisory only?

Answer. Having once served as a legislative assistant to United States Senator Jacob Javits, I have not forgotten the difference between report language and bill language: one the language of an enacted bill has the force of law, while report language is simply an expression of Congressional interest and intent. Secretary Mineta has made this point to the Department’s executive management team. He has made it clear that he understands the difference between statutory and report language, particularly with regard to the naming of specific projects in report language.

*Question 3.* How do each of you envision your role, if confirmed, with respect to the development and advocacy of policies promoting transportation security?

Answer. In the next two years Congress will be considering the reauthorization of the surface transportation and aviation programs, as well as other critical bills affecting virtually all modes of transportation. I look forward to assisting the President and the Secretary, and to working with Congress, in addressing these critical issues. I believe that the legislation in all these areas—legislation that I hope to help shape—must necessarily incorporate the critical goals of safety and security in our transportation system, and seek to balance those requirements with mobility and reliability.

While the position for which I have been nominated will not carry with it management responsibilities for the Department’s transportation security programs, I hope to play a constructive role—working with my colleagues at the Department of Transportation, with Congress, and with state and local officials—in analyzing, developing and advocating transportation safety and security policies and programs, relating to all modes.

*Question 4.* Through much of the last century, our nation’s maritime policy was directed toward supporting our national defense needs. While meeting our defense needs should and must remain a top priority, changes in the global market and advances in the maritime industry have clearly put new pressures on the industry that were not contemplated during the development of many of the laws and regula-

tions that form our current maritime policy. What specific changes would you propose to bring our nation's maritime policy in line with the maritime industry of today?

Answer. In the past, U.S.-flag vessels have competed with other nations primarily on the basis of superior service quality and reliability and their ability to provide better intermodal connections to domestic transportation. Even so, U.S.-flag carriers need a cost structure that is not appreciably higher than those of direct, lower-cost competitors in the world market. U.S.-companies must earn sufficient returns to cover costs, and to fund the continuing investments required in this extremely capital-intensive industry, if they are to remain competitive in a global market.

If confirmed, I look forward to supporting the Secretary in addressing these issues. To that end, I believe that we need to consider and assess all the options available to help U.S.-flag carriers meet the competitive pressures from foreign-flag carriers. These could include measures to provide direct assistance to carriers, measures to improve their tax liabilities, and measures to guarantee certain types of cargos to U.S.-flag carriers.

*Question 5a.* As you may be aware, I prefer to eliminate restraints on U.S. business competitiveness rather than provide subsidies that remove incentives for businesses to find new ways to operate and compete in the world market. I continue to believe that U.S. companies are struggling to compete in the international maritime industry in part because of the prevalence of subsidies by other flag-states. What are your views on maritime subsidies?

Answer. As you have noted, foreign government subsidies to their industries, as well as restrictions and barriers to free trade, have hurt American companies in international markets. United States companies will continue to operate at a disadvantage to foreign-flag shipping lines, as long as their governments use subsidies and other policies to distort or restrict market forces.

*Question 5b.* If confirmed, how would you propose to help improve the competitiveness of the U.S. maritime industry?

Answer. It is my understanding that the Administration will continue to press foreign governments to eliminate practices, which inhibit free market forces in the maritime sector. If confirmed, I look forward to supporting the President and the Secretary, and to working with Congress, in seeking to remove restrictions and barriers, which inhibit the capacity of American companies to compete fairly, and on a "level playing field," with foreign shipping lines.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN  
TO JEFFREY SHANE

AVIATION—GENERAL ISSUES

*Question 1.* Why is the Department reorganizing to create a new position for you to hold?

Answer. From the Department's inception until early 1993, the principal policy advisor to the Secretary was an Assistant Secretary for Policy and International Affairs. That job covered the entire spectrum of the Department's activities, both domestic and international. It became clear to me after spending nearly four years in that role (1989–1993) that the aviation and international affairs side of the portfolio had overwhelmed the office's ability to address a great many core transportation issues facing the country—notably in the surface modes. Based on that experience, I recommended to the incoming Clinton Administration in early 1993 that it consider splitting the office into two separate offices. My guess is that others may have had the same idea. The result was that two new offices were then created, each headed by an Assistant Secretary. One was the Office of Transportation Policy; the other was the Office of Aviation and International Affairs.

The change produced a real benefit: surface transportation, intermodal, and other issues now received once again the level of attention they deserve from the Secretary's senior policy advisors. Unfortunately, the change also deprived the Secretary of a single, centralized focal point for transportation policy advice and counsel.

The newly proposed structure, Secretary Mineta believes, offers the best of both worlds. Surface transportation and intermodal issues continue to benefit from the attention of an Assistant Secretary. Aviation and other international issues will also have the undivided attention of an Assistant Secretary. A new Under Secretary for Policy will have Department-wide scope and serve as the Secretary's principal policy advisor. The Under Secretary will have major responsibility for coordinating the development of new initiatives, developing the Department's views on pending pro-

gram reauthorizations and other key legislative initiatives, advising the Secretary on major regulatory and policy decisions, and brokering an on-going policy development effort that draws continually and cooperatively on the Department's operating administrations.

*Question 2.* What effect are these changes expected to have on the operations of the Department?

Answer. Our hope is that the new structure will furnish a basis for pulling the Department together, at last, in a way that Congress intended in the Department of Transportation Act of 1966. The idea is not to do violence to the Department's structure. Rather, it is intended to facilitate a drawing together of the Department's vast resources in a way that will enable us—in close cooperation with the Congress—to develop and manage truly fresh, creative, effective and forward-looking responses to our nation's transportation requirements. It is a structure, we believe, that will enhance the Department's ability to do business with its authorizing and appropriating committees, and vice versa.

*Question 3.* When can we expect to see proposed legislation to implement these organizational changes?

Answer. I am pleased to report that the House of Representatives on December 11 passed implementing legislation introduced by Chairman Don Young of the Committee on Transportation and Infrastructure. H.R. 3441 would make the needed structural changes in Departmental organization to put Secretary Mineta's proposed reorganization into place. The legislation is now before the Senate.

#### INTERNATIONAL AVIATION AGREEMENTS

*Question 1.* As you know, one of the most important matters pending before the Department with respect to international aviation is the American Airlines-British Airways application for antitrust immunity for their alliance. Everyone understands that immunity for this proposed alliance and the prospect of Open Skies with the United Kingdom are inextricably linked. While I have pushed hard for many years for a truly open air services market with Britain, it is essential that such an agreement and any associated conditions, such as approval of the alliance, produce a truly competitive and fair regime. It is clear to me that DOT's decision on this matter must not be rushed. Can you assure the Committee that the AA-BA application will receive a thorough and complete review?

Answer. I have recused myself from participation in the AA-BA case. While I have no reason to doubt that the AA-BA application will receive a thorough review, I am not privy to the Department's deliberations.

*Question 2.* As a general matter, what is your position with regard to the U.S./U.K. bilateral, and what will you do to ensure that the United States is not put at a disadvantage with respect to access at Heathrow?

Answer. As you know, Bermuda 2 is a highly restrictive agreement in many ways. Given that both the U.S. and the U.K. now routinely seek pen-skies agreements with third countries, their inability to achieve an open-skies regime with each other represents a conspicuous aberration. It was the U.S. Government's goal to replace Bermuda 2 with an open-skies agreement during my last tour of duty at DOT (1989–1993), and that goal remains a priority for this Administration. I fully support that objective.

It has always been a fundamental element of the U.S. position that any new agreement with the U.K. must provide meaningful access to Heathrow for U.S. carriers. I fully support that objective as well. Because the precise nature of that access in the near term may well be a central element in the Department's disposition of the AA-BA proceeding—a case from which I am recused—I am unable to comment further at this time.

*Question 3.* What role would you play in DOT efforts to liberalize aviation markets around the world, and what areas do you see as a priority?

Answer. I expect to contribute my experience in international aviation to the Department's on-going efforts to liberalize aviation markets. I intend to focus on policy formulation, consultations with stakeholders, and negotiating strategy in cooperation with the Assistant Secretary for Aviation and International Affairs and her staff, as well as with our counterparts at the Department of State. We will continue to seek open skies agreements to the extent like-minded partners can be found, but I also believe that we should explore other avenues toward liberalization. The all-cargo sector might form a crucible in which to test new ideas; we should also try to build on the multilateral approach adopted with four of our APEC partners late last year. Although the United Kingdom, Japan, China, and Hong Kong are clearly our highest immediate priorities, I am also very interested in exploring further opportunities for progress with Canada, Latin America, and Africa. It is also reason-



able to anticipate that U.S.-EU negotiations are not far off. It is my hope that the Department will be able to engage all affected interests and the Congress in a thoughtful discussion about fostering greater liberalization, and thus more robust competition, in international aviation markets.

*Question 4.* What are your views on cabotage, and do you believe U.S. air carriers would be at an advantage or disadvantage if the Congress changed the cabotage laws?

Answer. In my view, U.S. airlines have demonstrated beyond doubt that they are effective, adaptable competitors in both domestic and international markets. I doubt that U.S. carriers would be at any net disadvantage were our cabotage laws changed; indeed, I would expect them to emerge as net winners in a regime that allowed them to exploit any market that offered meaningful new economic opportunity, whether at home or abroad.

There are, of course, some major practical impediments to the operation of domestic services by foreign carriers. First, foreign carriers operating in the domestic U.S. market would have to comply with all of the regulations, labor laws, and tax requirements that apply to U.S. carriers (and vice versa). A second is that any proposal to the U.S. to allow foreign carriers access to domestic markets would have to be wholly reciprocal. Third, any exchange of cabotage rights would have to be preceded by a great deal of detailed work in the legislative and regulatory area. It may well be for this reason that I have not detected any major groundswell of enthusiasm from foreign carriers for a change in our cabotage law.

*Question 5.* If confirmed, would you encourage the Congress to amend the Fly America Act, or do support the current law?

Answer. Code sharing and the growing number of alliances between U.S. and foreign airlines—meaning that U.S. Government passengers do fly more routinely on foreign carriers—have diminished the economic importance of this issue. Nonetheless, Fly-America requirements continue to be a sensitive point in some of our international aviation negotiations. In that connection, there is some scope under the Fly America provision for the United States to offer access to Fly-America traffic to our international aviation partners in exchange for benefits for U.S. aviation interests, although I know of no case in which such an exchange was entered into.

There are also competing considerations, however. First, the Fly America requirement has undoubtedly delivered important benefits to U.S. airlines. Second, as a former Vice President of the National Defense Transportation Association and former Chairman of the NDTA's Military Airlift Committee, I am fully aware of the importance the Department of Defense attaches to Fly America as an incentive to CRAF participation by U.S. carriers. In other words, there continue to be divergent views on this issue that will have to be carefully considered before we will be in a position to decide whether to offer Congress a recommendation regarding the Fly America legislation.

*Question 6.* What is your position on changing the 25-percent limitation on foreign investment in U.S. airlines?

Answer. As globalization of the airline industry and the growing number of carrier alliances continue to strain the decades-old limitations on foreign investment in U.S. airlines, this issue is sure to receive increasing prominence. A change could open up new sources of capital for U.S. airlines, strengthening their competitiveness, and thus contributing to a more open global aviation regime. Again, however, I am fully aware of countervailing considerations, such as the possible implications of a change in the foreign investment ceiling on our defense preparedness, that require careful analysis. My impression, too, is that airline labor is generally opposed to permitting foreign investors to own a more significant stake in U.S. airlines. Without attempting to predict what the outcome of a public policy debate on the continuing utility of foreign investment restrictions would be, I would hope that we could have that debate at the appropriate time.

#### AIRLINE TICKET DISTRIBUTION ISSUES

*Question 1.* For each of the past few years DOT has extended the current Computer Reservation System (CRS) rules for a year without addressing the concerns that it raised about the rules' applicability to Internet sales and other issues. Do you believe the CRS rules should apply to Internet distribution of airline tickets?

Answer. Because the Department recognizes the importance of the question of whether the CRS rules should be applied to the Internet sale of airline tickets, the Department asked the parties in its pending CRS rulemaking to comment on this issue. I understand that many parties submitted comments on this issue to the Department over the years, and they disagree on whether regulation is necessary. This

is an issue that needs to be decided, but I have not yet had an opportunity to review their comments.

*Question 2.* When will DOT act to finalize changes to the CRS rules?

Answer. I know that Secretary Mineta views the issue as a priority and has recently instructed the staff to move forward on the rulemaking and develop a rule-making proposal that can be forwarded to OMB. The staff is currently at work on an NPRM. I fully expect that a final rule will be issued—after comments on the NPRM have been digested—by mid-2002.

#### SURFACE/MERCHANT MARINE

*Question 1a.* As you may be aware, last month the Amtrak Reform Council (ARC) voted 6:5 making a “finding” that Amtrak will not meet its statutory requirement of operational self-sufficiency by next year’s deadline (December 2, 2003). Have you had an opportunity to review Amtrak’s financial and operating performance?

Answer. I have reviewed Amtrak’s financial and operating performance in a general way. The company is still in very difficult financial circumstances. Costs have increased faster than revenues and capital needs for the current system are very large.

*Question 1b.* Given the Secretary’s membership role on both the ARC and the Amtrak Reform Board, does the Administration intend to submit a rail passenger restructuring proposal or some type of proposal to address Amtrak’s severe financial situation, and if so, when?

Answer. The Department is working to develop a comprehensive federal policy to guide the future of rail passenger service and the financing of high-speed rail. Our aim is to have this policy ready when we submit the FY 2003 budget early next year. After that the Department intends to work with the Congress to develop a legislative package to implement that policy. I look forward to being an active participant in that process.

*Question 2.* Earlier this week, the Senate approved, without my support, H.R. 2299, the DOT Appropriations Bill for fiscal year 2002. That bill was an egregious overreach by the Appropriators in redirecting the programmatic expenditures and directives under the laws developed by the Authorizing Committees. There were more than \$4.1 billion in earmarked projects (\$1.2 billion in the conference report and \$2.9 billion in the statement of managers). It went so far as to redirect nearly \$1 billion in highway dollars that should have gone out by formula to the states or allocated to the highway programs and the money was used as a slush fund to earmark the Appropriators’ home-state projects. I want to ensure that each of you fully understands the difference in the legal effect between report language and bill language. Do you understand that report language is advisory only?

Answer. My first assignments with the Department were in its legal office. The Committee can be confident that I do understand the difference between statutory and report language, particularly when it comes to the naming of specific projects. In such instances, only statutory language is law; report language is not law but simply an expression of Congressional interest. I know, furthermore, that the Secretary has made this point clearly to his new management team.

*Question 3.* How do each of you envision your role, if confirmed, with respect to the development and advocacy of policies promoting transportation security?

Answer. As Under Secretary for Policy, I would expect to maintain a close working relationship with the Under Secretary for Security. My expectation would be to stay fully apprised of the work of the new Transportation Security Administration (TSA) and to ensure that we miss no opportunities to integrate more effective security measures into the Department’s organic programs. The forthcoming reauthorization of our surface and air transportation programs will have to be undertaken with a heightened attention to the security dimension and, if confirmed, I would expect to be in a position to help coordinate the development of appropriate security provisions in that legislation—again in close cooperation with the Under Secretary for Security and the TSA. Finally, the Department’s international activities need to be heavily focused on the need for more effective transportation security. It is self-evident that a transportation security program focused exclusively on domestic activities will not deliver the full measure of security that we must have. New international protocols and a new level of international cooperation and harmonization are urgently required if we are to achieve the objective of a fully secure transportation system.

*Question 4.* Through much of the last century, our nation’s maritime policy was directed toward supporting our national defense needs. While meeting our defense needs should and must remain a top priority, changes in the global market and advances in the maritime industry have clearly put new pressures on the industry

that were not contemplated during the development of many of the laws and regulations that form our current maritime policy. What specific changes would you propose to bring our nation's maritime policy in line with the maritime industry of today?

Answer. The President and Congress have repeatedly affirmed the need for a U.S.-flag international merchant fleet, a skilled American mariner workforce, and U.S. shipbuilding and ship repair infrastructure to assure the continued economic security and military readiness of the nation. Although the United States today is the world's largest trading nation, accounting for more than 24 percent of world ocean-borne trade, the U.S. maritime industry continues to struggle to compete effectively in international shipping and shipbuilding markets. If U.S.-companies do not earn sufficient returns to cover costs and the continuing investments required in this extremely capital-intensive industry, these companies will not be able to competitively operate US-flag vessels in a global market.

As Assistant Secretary for Policy and International Affairs during the first Bush Administration, I served as Vice Chairman of the Advisory Commission on Conferences in Ocean Shipping, and I worked closely with then Secretary of Transportation Andrew Card on a program that bore a strong resemblance to the later-enacted Maritime Security Program. Ocean shipping issues have long been of personal interest to me and of great concern.

In particular, I believe that we need to assess the options that might be available in the near term. These options may include: enhancements to the Maritime Security Program; the Voluntary Intermodal Sealift Agreement programs; revisions to the cargo preference regulations affecting the movement of food aid cargoes; and revisions to the Capital Construction Fund program which might attract new capital investment more effectively. We will also examine the U.S. tax burdens on our merchant marine and maritime workforce relative to those of their international competitors. By implementing a fair tax policy, we would begin to promote cost parity with the rest of the shipping world.

*Question 5.* As you may be aware, I prefer to eliminate restraints on U.S. business competitiveness rather than provide subsidies that remove incentives for businesses to find new ways to operate and compete in the world market. I continue to believe that U.S. companies are struggling to compete in the international maritime industry in part because of the prevalence of subsidies by other flag-states. What are your views on maritime subsidies? If confirmed, how would you propose to help improve the competitiveness of the U.S. maritime industry?

Answer. Let me preface my answer by saying that I am fully aware of your long devotion to the cause of U.S. international competitiveness. You can depend on the Department to be a staunch ally in the campaign to eliminate barriers to U.S. transportation providers in international markets.

Looking specifically at ocean shipping, it is certainly the case that foreign government subsidies to national industries and restrictions and barriers to free trade have hurt U.S. companies in global markets. As long as foreign governments maintain policies that distort or restrict market access, U.S. operators will operate at a disadvantage compared to foreign flag shipping lines. We will continue to press foreign governments to eliminate practices that distort the operation of a free marketplace for shipping services and remove restrictions and barriers on U.S. companies so that they can compete fairly in the world market.

At the same time, we need to be cognizant of another distortion that hurts U.S. operators. Like domestic rail and truck carriers and all U.S.-based industries, U.S.-flag vessel operators incur "U.S. costs" that their foreign competitors do not incur. I refer to burdens associated with taxes, labor rules, INS requirements, and rules relating to safety and the environment. If foreign-based shipping companies doing business in the United States could be required to comply with the same laws as American companies, the cost differential between U.S. and foreign operators would largely disappear. Because the United States cannot impose its cost structures on foreign operators, however, we need to examine whether there might be approaches to reducing the cost structure for U.S.-flag vessel operations that might enhance the prospects for the long-term survival of the fleet.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS  
TO JEFFREY SHANE

*Question 1.* During the recent Transportation appropriations bill, an amendment was accepted on the Senate floor that would have allowed greater flexibility in transferring cargo shipments at Anchorage International airport as long as all the

carriers involved (both domestic and foreign) had individually had rights to the final destination point within the United States.

Initially, the Department told me that they were “neutral” on that provision, but later decided that they needed to oppose it not because they opposed the result, but that it needed to be done in a “multilateral” aviation negotiation. Do we have any multilateral cargo aviation negotiations scheduled? Do we have any multilateral passenger cargo negotiations scheduled?

Answer. Although, at the present time, the Department does not have any multilateral aviation negotiations scheduled for cargo or passenger operations, we are continuing our efforts to bring Open Skies to as many countries as possible through our multilateral agreement that Secretary Mineta signed with four other countries, New Zealand, Chile, Brunei, and Singapore, in May 2001. This agreement is open for all nations to join. Effective in April 2002, Peru will become a partner to the agreement, and there is active coordination among the signatories to obtain additional partners. The multilateral agreement contains all the liberal elements of our bilateral Open Skies agreement, particularly in the cargo area where seventh-free-dom operations and liberal cargo transfer operations are authorized.

In addition, I anticipate that the European Commission will eventually receive a mandate from E.U. Member States to conduct negotiations with the U.S. on a multilateral basis. The Department has indicated that the U.S. is willing to discuss a potential E.U.-U.S. agreement at that time. Such an agreement would have to build on the open-skies bilateral relationships that the United States has already established with most European Union countries.

*Question 2.* Do you believe that we should pursue liberalizing the ability of airports and carriers to transfer cargo between and among carriers if each of those carriers have the requisite rights to carry that cargo to its final destination?

Answer. I recognize the economic importance to airports and communities of air cargo operations, including the ability of carriers to transfer cargo. Such matters are of particular importance to Alaska because of its unique geographic characteristics.

The Department has taken a number of actions to enhance and encourage cargo operations, and to facilitate the transfer of cargo traffic in Alaska. At the state's request, the Department has twice granted broad authorizations to U.S. and foreign carriers to permit such operations to take place at airports in Alaska.

I, personally, have been committed, throughout my entire career in aviation, to furthering liberalization of aviation services, and have made it a personal priority to review existing policies to achieve that end. For example, the cities program (which allowed extra-bilateral service by foreign carriers to underserved U.S. cities) and the first open skies agreement were developed during my tenure as Assistant Secretary for Policy and International Affairs from 1989 through early 1993.

I believe that it is important to consider fully what further liberalization may be accomplished to enhance economic benefits in the State of Alaska, as well as in other communities throughout the United States. In doing so, we must ensure full consideration of the impact of our efforts on those communities, as well as our industry and other affected parties. When international agreements are involved, we also need to make sure that arrangements are fair and reciprocal.

*Question 3.* What role do you anticipate playing in the office of the Secretary of Transportation vis-a-vis the Assistant Secretary for Aviation and International Affairs, the Assistant Secretary for Policy, and the Assistant Secretary for Budget and Programs?

*Question 4.* What are the line (management) responsibilities of the office you've been nominated for?

Answer to Questions 3 and 4. As you know, although my current nomination is for the position of Associate Deputy Secretary, it is Secretary Mineta's hope that Congress will approve the reorganization of DOT's policy function through the creation of a new position, Under Secretary for Policy. The intention is that I would be appointed to that position with the advice and consent of the Senate at which time the Associate Deputy Secretary position would be abolished. This response is addressed, therefore, to the role of the proposed Under Secretary for Policy.

The Under Secretary would have Department-wide scope, serve as the Secretary's principal policy advisor, and work closely with all elements of the Department to ensure that the nation's transportation programs are managed in an integrated and fully coordinated way.

As contemplated in Secretary Mineta's proposal, the Assistant Secretaries for Transportation Policy and for Aviation and International Affairs would report to a new Under Secretary for Policy. The Under Secretary would be the main focal point for formulating and evaluating new initiatives, developing the Department's views on pending program reauthorizations and other key legislative proposals, advising the Secretary on major regulatory and policy decisions, and managing a long-range

transportation policy development process that draws continually and cooperatively on the Assistant Secretaries for Transportation Policy and Aviation and International Affairs as well as the Department's operating administrations.

Because the present position of Associate Deputy Secretary would be abolished upon the creation of the new Under Secretary position, the reorganization would not expand the Office of the Secretary. Nevertheless, it is a structure that will enhance the Department's ability to interact with stakeholders throughout the transportation community. Secretary Mineta believes that the change will facilitate a drawing together of the Department's resources in a way that will enable the Department—in close cooperation with the Congress—to develop and implement truly creative, forward-looking, and intermodal responses to our nation's transportation requirements.

*Question 5.* As someone who has been in the international aviation arena for the last 20 years, what are goals have you personally set for next 2, 3, or 4 years for international aviation negotiations aviation?

*Answer.* The first objective must be to do all we can, both in multilateral fora and bilaterally, to establish a regime that ensures the security of international aviation. Although much has been accomplished already in the aftermath of 9/11, the effort will have to be focused and sustained over the long term. It is particularly important that we encourage our trading partners around the world to support initiatives recently undertaken within the International Civil Aviation Organization to tighten security standards further and establish a meaningful security audit program. We should reinforce these themes and objectives in all of our bilateral negotiations.

Regarding the negotiation of international aviation economic rights, the U.S. has pursued increasingly liberal aviation arrangements with its trading partners over the course of the past 25 years. Our current preferred model is Open Skies—a regime in which most of the restrictions that characterized earlier, more traditional agreements have been abolished. Open Skies agreements permit the airlines of signatory countries to operate in keeping with commercial exigencies rather than trying to game an artificially regulated market.

Although we have negotiated more than 50 Open Skies agreements with like-minded countries, there are still some conspicuous exceptions—the United Kingdom, Japan, China, and Hong Kong, to name four. My hope is that the United States will redouble its efforts to bring these important trading partners into a regime in which air transportation can contribute more fully to economic growth both here and abroad.

Finally, I would hope to enter into more negotiations on a multilateral basis in order to promote the benefits of the Open Skies model more widely and more efficiently. As indicated above, we should seek further signatories for the groundbreaking APEC agreement signed early last year by Secretary Mineta. I also anticipate that we will be able to conduct aviation negotiations with the European Union sometime in the near future.